SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 600.

GEORGE T. SIMPSON ET AL., APPELLANTS,

vs.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W DE FOREST, AND WILLIAM STEWART TOD, EXECUTRIX AND EXECUTORS OF THE WILL OF JOHN S KENNEDY, DECEASED, AND HENRY A. JAMES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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Testimony in three volumes and exhibits in two volumes, referred to on side page 223½, with separate index in each volume, accompany this record.

a Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY JAMES et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Præcipe for Return to United States Supreme Court.

To the Clerk of the Above Named Court:

Please make a return to the United States Supreme Court and include therein the following—viz:—

Bill of Complaint.
Temporary Restraining Order.
Præcipe for Chancery Subpœna.
Chancery Subpœna.
Order Continuing Hearing.
App. W. R. Begg for G. N. Ry. Co.
App. Rd. & Wh. Commission and order.
App. John Palm and Order.
App. Tom Gunness and Order.
App. E. T. Young and Order.
Motion to Dismiss as to E. T. Young the Bill of Complaint.
Motion to Dismiss Temporary Injunction as to E. T. Young.
Motion Dischg. Restraining Order as to Rd. & Wh. Comm.
Motion to Dischg. Restraining Order as to Palm & Larson.
Order Denying Motion to Dismiss Bill as to E. T. Young.
Order Denying Motion to Dismiss Order to Show Cause as to Rd. & Wh. Commission.
Order Continuing Hearing on Order to Show Cause for Temporary Injunction.
Order continuing Hearing on Order to Show Cause.
Answer G. N. Ry. Co.
Order Continuing Hearing on Order to Show Cause.
Opinion on Motion to Dismiss Order to Show Cause.
Order & Amendment to Bill of Complaint.

Demurrer Rd. & Wh. Commission.
" of E. T. Young.
" of John Palm and L. Larson.
" of Tom Gunness.
Stipulation Setting Demurrers down for Hearing.
Answer I. B. Mills et. al.
Record of Trial.
b Stipulation consolidating Causes. 858 & 870.
Record of Hearing.
Order Overruling Demurrers.
Order for Temporary Injunction.
Decision on Application for Temporary Injunction.
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Replication to Answer E. T. Young.
Replication to Answer of Commission.
Notice of Motion for Appointment of Special Master.
Order Appointing Special Master.
Oath of Special Master.
Stipulation & Order Substituting parties defendant.
Withdrawal of W. R. Begg & App. J. D. Armstrong. for Deft. Ry. Co.
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Stipulation for substitution of complainants and order.
Request and Order in re payment of costs.
Master's Report.
Record of Hearing on Master's Report.
App. of Special Master & Order to Show Cause.
Objections of Attorney General.
Order for Special Master's fees.
Decision confirming Master's Report.
Decree.
Consolidation of Causes.
Bill of Complaint Equity 870.
Præcipe for Chancery Subpœna.
Chancery Subpœna.
Restraining Order.
Record of Hearing.
Stipulation and Order Consolidating Cause with 858.
Order Overruling Demurrers.
Order for Temporary Injunction.
Decision on Appl. Temporary Injunction.
App. W. R. Begg and Order.
Answer of G. N. Ry. Co.
Replication.
Withdrawal of W. R. Begg.
App. G. T. Simpson.
Motion to modify Decree.
Record of Hearing Application for Appeal.
Stipulation and Order to File Abridged Copies Reports 1907-8-9.

Notice of Petition to Appeal.
Notice to Join in Appeal.
Petition for Allowance of Appeal.
Order Allowing Appeal.
Assignments of Error & Prayer for Reversal.
Bond on Appeal.
Citation.
Clerk's Certificate.
Printed copy of Testimony consisting of 7 volumes (Bound) also 1 volume of Complainants' Exhibits and 1 volume Defendants' Exhibits.
And Abridged Copies of Reports of Railway Company to Railroad & Warehouse Commission of State of Minnesota.

HALE HOLDEN,
JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Appellees.

GEORGE T. SIMPSON,
EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.

(Endorsed:) Præcipe for Return to U. S. Supreme Court. Filed May 10, 1911. Louise B. Trott, Clerk.

1 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY JAMES et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June Term of said Court, held in said District in the year of our Lord A. D. 1910.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 29th day of May, A. D. 1907, came the complainants above named by their solicitors and of counsel and filed in the Clerk's office of said Court their Bill of Compa*l*int in the words and figures following—viz:

2 Circuit Court of the United States in and for the District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Minnesota:

John S. Kennedy and Henry F. Dimock, who are each of them citizens of the State of New York, and residents of the City of New York, in said State, bring this, their bill of complaint, against the Great Northern Railway Company, a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and having its principal office and place of business in the City of
3 St. Paul, in said state, Edward T. Young, a citizen of the State of Minnesota and a resident of the County of Swift therein, Ira B. Mills, Charles F. Staples and William E. Young, who are each of them citizens of the State of Minnesota, and residents respectively of the Counties of Clay, Dakota and Blue Earth, in said state, Walter Scott and H. P. Webb, who are each of them citizens of the State of Minnesota and residents of the County of Pine therein, John Palm, L. Larson, Tom Gunness and S. S. Glarum, who are each of them citizens of the State of Minnesota and residents respectively of the Counties of Meeker, Clay and Kandiyohi therein, the defendants above named, and thereupon your orators complain and aver:

I.

That the defendant, Great Northern Railway Company, is a railroad corporation and common carrier of goods and passengers, engaged in state and interstate commerce, and maintains and operates lines of railway in the State of Minnesota and other states. The main line of said Great Northern Railway extends from the City of Superior, in the State of Wisconsin, and from the Cities of Duluth, St. Paul and Minneapolis, in the State of Minnesota, through the States of Minnesota, North Dakota, South Dakota, Montana, Idaho and Washington, to Seattle on the Pacific coast, including branches and constituent lines in said states. Its system of roads, including its said main line and branches, comprises about 6,200 miles, of which more than 1,902 miles are located wholly within the State of Minnesota. The whole of the said lines of railway so operated by the said Great Northern Railway Company constitute and have constituted one system, and are and have been operated and maintained

as such. The stock of the said company outstanding represents the entire system. Its cars, engines and appliances are used upon the entire system wherever acquired. It is impossible to segregate its stock and to apportion any part thereof as standing for or representing the said Railway Company or its property in any particular state. It is impossible to operate the said lines of railroad separately in any state, and the trains of the said Railway Company, for the most part, necessarily move through and between different states, the same trains and cars carrying both interstate freight and passengers and also intra-state freight and passengers. The principal business of the said Railway Company consists of interstate commerce, and it is a carrier of such commerce, subject, as your Orators are advised and believe, to the sole control and supervision of the United States.

II.

The defendant Edward T. Young is the Attorney-General of the State of Minnesota, and the defendants Ira B. Mills, Charles F. Staples and William E. Young are members of and constitute the Railroad and Warehouse Commission of the State of Minnesota, duly elected and acting under the General Laws of the said state. The defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum are hereby designated as shippers, each being a person engaged within the State of Minnesota in shipping and receiving freight over the lines of the said Great Northern Railway Company. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all as parties hereto, and those above named are made defendants for the purpose of determining the rights as against the said Railway Company of all shippers under the acts and orders, respectively, hereinafter set forth.

III.

This cause arises under the Constitution and laws of the United States, for that your Orators seek to enjoin the said defendant, Great Northern Railway Company, from publishing or adopting, or from continuing to observe or keep in force, if the same have been published or adopted, certain rates, tariffs and charges prescribed or set forth in two certain Acts of the Legislature of the State of Minnesota, and two certain orders of the Railroad and Warehouse Commission of the said state, hereinafter specifically described, and to enjoin the other defendants herein, and each of them, from attempting in any manner to enforce the provisions or penalties of the said Acts or orders, or either of them, or from instituting or causing to be instituted any action or proceeding against the said defendant Railway Company, its officers, directors, agents or employees, on account of any violation thereof, for the reason that the said Acts and the said orders, and each of them, and the tariffs, rates, charges, regulations, schedules and classifications, attempted to be promulgated thereby, are each and all of them unconstitutional and void and violative of the provisions of the Constitution of the United States

and the amendments thereof, all as hereinafter more particularly set forth.

The matter and amount in dispute in this action exceeds, exclusive of interest and costs, the sum or value of Two thousand Dollars ($2,000.00).

IV.

That the Legislature of the State of Minnesota, at its session in the year 1907, passed an Act which was duly approved on the 4th day of April, 1907, which said Act is entitled: "An Act Prescribing Maxi- "mum Rates to be Charged for the Transportation of Passengers "upon Railroads within the State of Minnesota, Providing for the "Enforcement of the Same and Penalties for the Violation thereof," a copy of which Act is hereunto annexed, marked "Exhibit A," and hereby made a part hereof as though the same were here fully and at large set forth, and which Act, by the terms thereof, took effect and became operative on the first day of May, 1907.

6 That at the same session the said Legislature of the State of Minnesota passed an Act, which was duly approved on the 18th day of April, 1907, which said Act is entitled "An Act Relat- "ing to Railroad Freight Rates in the State of Minnesota and De- "fining Certain Duties of the Railroad and Warehouse Commis- "sion," a copy of which said Act is hereunto annexed and marked "Exhibit B" and hereby made a part hereof as though the same were here fully and at large set forth, and which Act, by the terms thereof, will take effect and be in force on and after June first, 1907.

That on the 6th day of September, 1906, the defendants above named, Ira B. Mills, Charles F. Staples and William E. Young, constituting the Railroad and Warehouse Commission of the State of Minnesota, assuming to act under and by virtue of the provisions of the general statutes of the said State, made and published, and thereafter duly served, an order entitled, "In the Matter of the In- "vestigation of the Reasonableness of the Merchandise and Com- "modity Tariffs of Rates and Charges between Stations in the State "of Minnesota on the Several Lines of Railroad," and thereafter, pursuant to a note appended to the said order of the said Railroad and Warehouse Commission, on the 3rd day of May, 1907, duly made, published and served an order entitled "In the matter of the "Commodity Rates to Distributing Centres Hereinafter Named on "the Lines of the Great Northern Railway Company," copies of which orders are hereto annexed and marked respectively "Exhibit C" and "Exhibit D," and are hereby made a part hereof as though the same were here fully and at large set forth.

V.

Your Orators further show that the said Great Northern Railway Company, its officers, directors, agents and employees, have published and put in force and effect, and now keep and main-

7 tain in force and effect, the passenger rates prescribed in said Act of April 4, 1907, and the freight rates mentioned in said order of the Railroad and Warehouse Commission of September

6, 1906, and threaten to publish and put into effect the freight rates mentioned and set forth in said Act of April 18, 1907, and the freight rates mentioned and set forth in the said order of May 3, 1907, when the same shall respectively become effective under and by virtue of their terms, as therein set forth.

VI.

That the said Act of the Legislature approved April 4, 1907, prescribes that no Railroad Company owning, operating or using a line of railroad within or partly within the State of Minnesota shall charge or collect more than two cents per mile for carrying over its road on any trip wholly within the said state any passenger of twelve (12) years or age or over, together with baggage not exceeding one hundred fifty (150) pounds in weight, or more than one cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five pounds (75) in weight.

The said Act approved April 18, 1907, and the said orders of the Railroad and Warehouse Commission dated respectively September 6, 1906, and May 3, 1907, attempt to promulgate and prescribe certain fixed tariffs, charges and schedules of rates for the transportation of merchandise and commodities on railroads between points within the State of Minnesota.

VII.

The conditions attending the transportation of passengers, merchandise and the commodities mentioned in the said Act of April 18, 1907, are the same upon the lines of the defendant Railway Company in the State of Minnesota, and in the States of Wis-
8 consin, North Dakota and South Dakota, which are contiguous thereto, and it is the legal duty of the said Railway Company to serve all the localities above mentioned and all the communities therein without discrimination, and therefore, in view of the legal obligation of the said Railway Company not to discriminate, its practice has always been to make its passenger rates and its tariffs upon merchandise and the said commodities upon a uniform principle or basis, disregarding state lines. Its rates upon passenger transportation, upon merchandise and the said commodities have been the same for similar distances upon local passenger transportation or local shipments, as the case may be, in the States of Wisconsin, Minnesota, North Dakota or South Dakota, and upon interstate shipments between the said states. In view of the conditions described, it is and has been utterly impossible to apply in either of the said states a materially different plan, system or scale of tariffs upon passenger transportation or upon merchandise or upon the said commodities, or a materially lower plan, system or scale of tariffs upon local passenger transportation or upon local shipments of freight in any of the said states than those applied upon interstate shipments and passenger traffic.

The tariffs of said Railway Company upon merchandise prior to September 6, 1906, and May 3, 1907, and affected by said orders of

the said Railroad and Warehouse Commission of those dates respectively, and the tariffs of the said Railway Company on commodities, in force prior to April 18, 1907, and affected by the said Act of the Legislature of that date, and the tariffs of the said Railway Company for passenger transportation in force prior to April 4, 1907, and affected by the said Act of that date, and all other tariffs of said Railway Company, were and are reasonable and fair as between different states, and the local tariffs in each state were and are reasonable and fair as compared with the interstate tariffs.

9 Between the distances of 250 miles and 320 miles on the lines of said Railway Company there are many stations in the State of Minnesota, and also in the States of Wisconsin and North and South Dakota, between which there is a similar commerce and passenger traffic under similar conditions, and your Orators are advised that there is no principle upon which the said Railway Company can legally apply to those stations outside of the State of Minnesota a materially higher or different scale of rates and charges than it applies to stations within the said state.

If the States of Wisconsin, North Dakota and South Dakota, and other states through which the lines of the said Railway Company pass, should each of them fix and establish rates and tariffs for the transportation of passengers and of merchandise and commodities similar to those sought to be established by the said Acts of April 4, 1907, and April 18, 1907, of the State of Minnesota, and by the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, the result would be that the interstate rate which might be charged by the said Railway Company for the transportation of passengers or freight, as the case may be, could not practically be greater than the sum of the local rates, and therefore, would be wholly governed and controlled by the rates so established by such respective states, and not by the laws of the United States.

As applied to the said Railway Company, having regard to the conditions above described, and in view of the legal obligation of the said Railway Company not to discriminate between the different localities and communities served by it, the said Acts of April 4, 1907, and of April 18, 1907, and the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, and each of them, operate necessarily and directly upon interstate commerce and are a regulation of interstate commerce,

10 in violation of the exclusive power in the premises granted to Congress by the Constitution of the United States.

VIII.

Your Orators further show that the railway lines and roads of the said Railway Company are well and judiciously located, were built in obedience to public necessity, and are properly equipped and built, having reference to the business of the country, and are well, prudently and economically operated. Its property represents an actual and fair value of not less than $400,000,000, and it could

not, as your Orators are advised and believe, be reproduced for that sum.

The said Railway Company owns practically the entire capital stock of the St. Paul, Minneapolis & Manitoba Railway Company, the Eastern Railway Company of Minnesota, the Duluth, Benson and Watertown Railway Company, and the Willmar and Sioux Falls Railway Company, and has guaranteed the bonds issued by the said Companies, all of which it operates under leases. The total outstanding capital stock of the Great Northern Railway Company is $149,577,500, and the bonds of the said subsidiary railroad companies so guaranteed by it aggregate the sum of $83,119,939.

Your Orators further show that the cost and expense of the transportation of passengers, and of merchandise and commodities, between stations in the said State of Minnesota, is as great as the cost and expense of such transportation in other states through which the lines of the said Railway Company run, and the cost and expense of such transportation of passengers, merchandise and commodities between stations in said State of Minnesota is far greater per mile than the cost of interstate passenger and freight traffic which moves for longer distances over its lines of railway.

11 The cost and expense to the said Railway Company of maintaining and operating its said lines of railway, and the cost and expense incident to the transportation of passengers, merchandise and commodities, both within the State of Minnesota and elsewhere, has steadily and largely increased during recent years. The salaries and wages of its employees have been largely increased from year to year, and during the last six months more than ten per cent. The cost of all materials used in the maintenance and repair of the lines of the said Railway Company, and of all railroads in this section of the country, has largely increased within the past few years, and particularly within the past year, more than twenty-five per cent. The taxes on the properties of the said Railway Company have largely increased from year to year, and particularly within the State of Minnesota.

Your Orators further show that, as they are advised and believe, the probable volume of business local to Minnesota, both in passenger traffic and in the merchandise and commodities transported over its lines of railway, during current and subsequent years, will not greatly exceed the volume of such business transacted during the year ended June 30, 1903, and the cost and expense of transacting all of such business will increasingly exceed the cost of transacting the same class of business for the said year ended June 30, 1906.

IX.

As your orators are advised and believe, the passenger rates in force — to the enactment of the said Act of April 4, 1907, upon all the lines operated by the said Railway Company and upon the lines and the portions of said lines wholly within the State of Minnesota, were reasonable and low. None of the said rates were unreasonably high, and many of them were and had been for a long time

12 past, unreasonably low and have not yielded a fair and reasonable return upon the investment in the said lines of railway

and the equipment necessary to perform the service of such transportation. Such rates for local transportation of passengers within the State of Minnesota were not higher than they should be, as compared with the rates maintained and collected by the said Railway Company in other states through which its lines of railway run, and the same have not been and were not unreasonably high as compared with the rates charged by the said Railway Company for the interstate transportation of passengers.

During the year ending June 30, 1906, the total number of passengers carried one mile by the said Railway Company between points within the State of Minnesota was 73,916,484, and the revenue derived therefrom to the said Railway Company was $1,965,-122.92, making an average of 2.459 cents for each passenger carried one mile.

If the rate and charge for such passenger transportations within the State of Minnesota had been two cents for each passenger per mile, as attempted to be prescribed by the said Act of April 4, 1907, the gross receipts of the said Railway Company for such passenger traffic would have been $1,598,306.26, a decrease of $366,816.66.

The cost and expense to the Railway Company of the transportation of its said passengers over its lines wholly within the State of Minnesota, during the year ended June 30, 1906, so nearly as the same can be estimated, and treating mail, express and news privileges as local earnings, amounted to $2,262,319.38, a sum of $297,196.46 in excess of the total gross receipts of the said Railway Company from such passenger business.

The passenger rate, therefore, prescribed by said Act of April 4, 1907, would not and will not, if the same be enforced in current and future years, afford the said Railway Company sufficient revenue to pay the cost of transacting the passenger business upon its lines within the State of Minnesota, and would not and will not, if the same be enforced, yield any return whatever upon the investment of the said Railway Company in its lines and properties and the equipment necessary to perform the service of said transportation, and the said rate, therefore, would be and will be, if enforced, unreasonably and unjustly low, and not only non-compensatory, but confiscatory, and would and will, if enforced, deprive the said Railway Company and your Orators of property without due process of law, in violation of the provisions of the Constitution of the United States.

The local passenger rates in force in the State of Minnesota prior to the first day of May, 1907, when the said Act of April 4, 1907, took effect, bore a just relation to the local passenger rates in other states, and to interstate passenger rates. No reduction can be made in the local passenger rates and charges within the State of Minnesota without similar and corresponding reduction being made in the local rates and charges in other states upon the lines of the said Railway Company, and the interstate passenger rates and charges of the said Railway Company were and had been prior to May 1, 1907, so adjusted that under the provisions of the said Act of April 4, 1907, the reduction of the passenger rates and charges prescribed by said Act

would and will necessitate a reduction in a large number of interstate passenger rates and charges of the said Railway Company, which were, had been and are now just, fair and reasonable, and such reduction would and will result in the loss of a large amount of revenue to the said Railway Company.

The said Railway Company cannot legally discriminate in its passenger rates and charges between different places and persons, and the interstate passenger rates and charges which may or might be charged by the said Railway Company cannot practically be
14 greater than the sum of the local passenger rates and charges between the same points and intermediate points. If the said Act of April 4, 1907, and the rates prescribed thereby shall continue to be in force, the said Railway Company will of necessity be required to apply similar rates to its interstate business in the State of Minnesota, and thus largely reduce its interstate passenger rates and charges and the earnings therefrom and will thereby be deprived of the revenue sufficient to pay the actual costs and expenses of conducting said business.

Your Orators therefore show and allege that the reduction of the passenger rates of the said Railway Company prescribed by the said Act of April 4, 1907, and which have actually been in force and effect upon the lines of the said Railway Company within the State of Minnesota since the first day of May, 1907, are unjust, unreasonable and confiscatory, and would and will, if continued in force and effect, deprive your Orators and the said Railway Company of its property without due process of law, and would and will deprive it of the equal protection of the law, contrary to and in violation of the Constitution of the United States and the amendments thereof.

X.

As your Orators are advised and believe, the tariffs and charges of the said Railway Company at and prior to the date of the promulgation of said orders of September 6, 1906, and May 3, 1907, covering the merchandise specified in the said orders, and the tariffs and charges now in force upon the said Railway Company covering the commodities specified and included in said Act of April 18, 1907, were and are reasonable and low, none of the said tariffs and charges were unreasonably high, and many of them are and have been
15 for a long time past unreasonably low and have not yielded a fair and reasonable return upon the investment of the said lines of railway and the equipment necessary to perform the service of the transportation of such merchandise and commodities.

Such tariffs and charges for the local transportation of the said merchandise and commodities within the State of Minnesota were not and are not higher than they should be, as compared with the tariffs and charges maintained and collected by said Railway Company in other states through which its lines of railway run, and the same have not been and are not unreasonably high, as compared with the tariffs and charges of the said Railway Company for the transportation of such merchandise and commodities in interstate traffic; and the said tariffs and charges in force prior to and at the

time of the promulgation of the said orders and the said Act, on the merchandise and commodities mentioned therein respectively, are and have been reasonable and just, in comparison with the tariffs and charges of the said Railway Company in other states and upon interstate traffic.

As your Orators are advised and believe said Railway Company has within the past year largely reduced the tariffs and charges for transportation upon its lines, both interstate and intrastate, upon the merchandise and commodities specified in the said orders of September 6, 1906, and May 3, 1907, and in the said Act of April 18, 1907, and the said orders of September 6, 1906, and May 3, 1907, prescribe and establish a still further reduction in the tariffs and charges previously in force for the transportation of merchandise shipments over the lines of the said Railway Company within the State of Minnesota, which said reduction amounts to twenty-two per cent (22%) of the tariffs and charges previously in force, and the said Act of April 18, 1907, would and will, if the same be enforced,
16 reduce the tariffs and charges for the transportation of the commodities mentioned therein over the lines of the said Railway Company within the State of Minnesota, about six per cent. below the tariffs and charges now in force for the transportation of such commodities.

And the said Railway Company, as your Orators are advised and believe, did not and does not, under the tariffs and charges in force prior to the promulgation of said orders of September 6, 1906, and May 3, 1907, upon merchandise, and under the tariffs and charges now in force upon the commodities mentioned in the Act of April 18, 1907, earn any sum in excess of the cost of economically operating its said lines of railway and a fair and reasonable return upon the investments in its said lines of railroad and the equipment necessarily used in the handling of such traffic, and the said tariffs and charges so attempted to be fixed and established by said orders of September 6, 1906, and May 3, 1907, and the said Act of April 18, 1907, will not afford to the Railway Company, during the current and future years, sufficient revenue to pay for the cost and expense of the transportation of the said merchandise and commodities to which the said tariffs and charges are applicable, and yield any fair or just return upon the investment of the said Railway Company in its lines and properties and the equipment employed in such service.

The local tariffs and charges on said merchandise and commodities now and previously in force in the State of Minnesota bear a just relation to the local tariffs and charges in other states, and to interstate tariffs and charges upon the same merchandise and commodities. No reduction can be made in the local tariffs and charges in Minnesota without similar and corresponding reduction being made in the local tariffs and charges in other states upon the lines of the said Railway Company, and the interstate tariffs and
17 charges of the said Railway Company are and have been so adjusted that under the operation of the said orders of September 6, 1906, and May 3, 1907, and of the said Act of

April 18, 1907, a reduction in the tariffs and charges, if effectuated by the said orders and by the said Act, would and will necessitate a reduction in a large number of interstate tariffs and charges of the said Railway Company, which are now just, fair and reasonable, and the same would and will result in the loss of a large amount of revenue to the said Railway Company.

The tariff and charges prescribed in the said order of September 6, 1906, and in the said Act of April 18, 1907, are determined upon the basis of allowing a charge for a terminal service plus a per mile charge for hauling service, the hauling service charge per mile being materially higher for short distances than for long, and after a distance is reached of from two to three hundred miles, varying in case of the several commodities named, a constant and very small hauling charge is added for additional distances. The principal or ratio of increase or additional distances above two and three hundred miles in said order, and in said Act is so low as not to pay the actual cost of such haul, and if enforced, would compel the said Railway Company to haul such commodities and merchandise without any adequate compensation, and is therefore unreasonable and confiscatory.

The said Railway Company is engaged in the transportation of said merchandise and commodities, not only wholly within the State of Minnesota, but between points in other states, and is engaged in the transportation of such merchandise and such commodities in interstate traffic. The tariffs and charges specified in said order and in said Act are lower than such tariffs and charges of said Railway Company in interstate traffic. The said merchandise and commodities are handled by the said Railway Company over its lines of railway in interstate traffic in the same trains and with the same employees as similar merchandise and commodities in traffic
18 local to Minnesota. The interstate and intrastate traffic are mingled together, and the circumstances and conditions attending the handling of such merchandise and commodities in interstate traffic are not different from those attending the handling of such merchandise and commodities locally within the State of Minnesota.

The said Railway Company cannot legally discriminate in its tariffs and charges between different places and persons, and interstate tariffs and charges which might be charged by the said Railway Company cannot practically be greater than the sum of the local tariffs and charges for the transportation of said merchandise and commodities between the same points and intermediate points. If the said order and the said Act shall be enforced, the said Railway Company will of necessity be required to apply similar rates to its interstate business, and thus largely reduce its interstate tariffs and charges and the earnings therefrom, and will thereby be deprived of a revenue sufficient to pay the actual cost and expense of conducting such business.

Your Orators therefore show and allege that said proposed reduction of the tariffs and charges of the said Railway Company upon the merchandise and commodities specified therein, under said order of September 6, 1906, and of the said Act of April 18, 1907, are

unjust, unreasonable and confiscatory, and would and will, if enforced, deprive your Orators and the said Railway Company of its property without due process of law and deprive it of the equal protection of the law, contrary to and in violation of the Constitution of the United States and the amendments thereof.

XI.

Your Orators further show that if the principle upon which
19 the passenger and freight tariffs are attempted to be fixed and established by the Acts of the State of Minnesota and the orders of the Railroad and Warehouse Commission of said State, as above described, and the percentages of reduction effected by the said Acts and the said orders, should be applied to the local business of the said Railway Company in other states through which the lines of the said Railway Company run, by reason of the enactment of similar legislation in such other states, and if the said principle and the said percentages of reduction should thereupon be applied to the long-haul interstate business of the said Company, which would necessarily be the case in the event of the enactment of such legislation, since the interstate rate could not practically be greater than the sum of the local rates, such measure of reduction would leave the said Company without sufficient revenue to pay the actual cost of the maintenance and operation of its system of railroads, and would operate to confiscate the property of the said Railway Company and deprive it of its property without due process of law, in violation of the Constitution of the United States.

XII.

Your Orators further show and aver that the penalties and punishments denominated by the said Acts of April 4, 1907, and April 18, 1907, for failure to comply with any of the provisions thereof, or with any of the rates or charges prescribed and fixed thereby, are wholly immoderate and unreasonable and excessive, and bear no just comparison to the causes or matters in respect to which they are denounced, and that said excessive penalties are, as your Orators verily believe, prescribed by the said Acts with a view and intention that the same shall appear as a threat and a menace to said Railway Company and other Railway Companies subject to the operation of
20 said Acts, to the end that they may be thereby compelled and coerced into the adoption of the said rates and charges prescribed by the said Acts, whether or not the same shall be fair, reasonable and just or conformable to the Constitution of the United States. That the enforcement of the multiplied and excessive penalties and punishments prescribed by the said Acts would result in serious loss, damage and bankruptcy to Railway Companies subjected thereto, including the said Great Northern Railway Company, and the operation of the said Acts in this respect is harsh, unreasonable and confiscatory, and your Orators aver that the said Acts are, and each of them is, in this respect, contrary to and in violation of the Constitution of the United States and the amendments thereto,

and deprives the said Railway Company and your Orators of property without due process of law and denies to it and to them the equal protection of the law.

XIII.

Your Orators further show that they are now, and for many years last past have been continuously, shareholders in the said Great Northern Railway Company, the said John S. Kennedy owning over 50,000 shares of the stock of said Company, and the said Henry F. Dimock owning over 1,000 shares thereof, each of which shares is worth and of the value of more than one hundred dollars ($100) per share, and they bring this bill in their own behalf and on behalf of all the other stockholders in the said Railway Company similarly situated who may join herein.

Your Orators further show that prior to the enactment of said laws of April 4, 1907, and April 18, 1907, the said Great Northern Railway Company had announced an increase in its capital stock to the extent of sixty million dollars ($60,000,000), and invited its
21 stockholders to subscribe thereto, the proceeds of such increase of stock to be devoted to acquiring additional properties and providing additional facilities upon the lines of the said defendant Railway Company. That thereafter the Attorney General of the State of Minnesota brought a suit to enjoin the said proposed issue of new stock, but an injunction was denied and the said proposed issue was held valid and legal by the Supreme Court of the State of Minnesota, and thereafter your Orators did subscribe in proportion to their previous holdings to the new stock issue; your Orator, John S. Kennedy, subscribed to more than twenty thousand (20,000) shares of the said increased stock, and has paid thereon certain installments aggregating at this date over forty per cent. (40%) of the par value thereof, and your Orator, Henry F. Dimock, has subscribed to more than four hundred (400) shares of the said increased stock and has paid thereon several installments aggregating over forty per cent. (40%) of the par value thereof. And thereafter the said Legislature of the State of Minnesota passed the two Acts aforesaid, which, if enforced, will depreciate the value of the said stock so subscribed and contracted for and in part paid for by your Orators.

XIV.

Prior to the institution of this suit, and after the passage of the said Acts of April 4, 1907, and April 18, 1907, one of your Orators, John S. Kennedy, on his own behalf and on behalf of your Orator, Henry F. Dimock, and all other stockholders, duly demanded of the President and managing directors of the said Great Northern Railway Company that they should decline to put into effect the tariffs, rates and charges prescribed in the said passenger and freight bills of April 4, 1907, and April 18, 1907, respectively, and that said corporation, its officers and directors, should institute proper suit
22 or suits to have the said bills and the said reduction of rates attempted to be effected thereby declared illegal and enjoined,

and the said corporation and its directors, through its President, have declined and refused so to do.

That this suit is not in any manner or to any extent a collusive one to confer upon the court of the United States jurisdiction of a cause of which it would not otherwise have cognizance.

XV.

Your Orators further show that every freight shipment made after the first day of June, 1907, and which the said Act of April 18, 1907, seeks to affect, and every passenger carried after the first day of May, 1907, may result in an action against the said Great Northern Railway Company and a criminal proceeding against its officers, directors, agents or employés, and that unless said Railway Company accepts and adopts said Acts of April 4, 1907, and April 18, 1907, and submits itself to all of the provisions thereof, and duly adopts and enforces upon its lines the rates, tariffs and charges prescribed therein, notwithstanding that the same are unfair, unreasonable, unjust and confiscatory and in violation of the Constitution of the United States, or unless said Railway Company, its officers, directors, agents or employés, are protected by the order of this Court, the said Railway Company, its officers, directors, agents or employés, will be subjected to an endless number of actions at law and of criminal proceedings, and there will thereupon result a multiplicity of suits against said Railway Company and criminal proceedings both against the said Railway Company, its officers, directors, agents and employés.

23

XVI.

Your Orators further show that if the said Railway Company, its officers, directors, agents and employés, shall decline to publish and put in force and effect the said order of the Railroad and Warehouse Commission of May 3, 1907, or to continue in force and effect the said order of September 6, 1906, the said Commission and the said Edward T. Young, as Attorney-General of the State of Minnesota, in behalf of the said Commission, will institute proceedings by mandamus or otherwise against said Railway Company, its officers, directors, agents or employés, to enforce the said order and all the provisions thereof, and threaten to and will take other proceedings against the said Company and against its officers, directors, agents and employés, to the same end and for the same purpose. That if the said Railway Company, its officers, directors, agents and employés, shall fail or refuse to put into force and effect the rates, tariffs and charges as prescribed by the said Act of April 18, 1907, or shall fail or refuse to continue to keep in force and effect the passenger rates prescribed by said Act of April 4, 1907, the said Edward Y. Young, Attorney-General of the State of Minnesota, threatens to and will institute mandamus or other proceedings for the purpose of enforcing the said Acts and each thereof, and will institute or cause to be instituted other proceedings for the enforcement of the penalties and punishments prescribed therein for the violation thereof.

In Consideration Whereof, and for as much as your Orators are remediless in the premises by the strict rules of the common law, and can only have relief in a Court of Equity, where matters of this kind are properly cognizable and relievable, your Orators pray that
24 said Acts of the Legislature of the State of Minnesota of April 4, 1907, and April 18, 1907, respectively, and each of them, and the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, be declared to be in violation of the Constitution of the United States, and therefore, void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés, are concerned, and that said Great Northern Railway Company, its officers, directors, agents and employés, be temporarily and permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said order of September 6, 1906, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates and charges set forth and prescribed in said Act of April 18, 1907, or said order of May 3, 1907, or from reducing its tariffs, rates and charges to the figures set forth in the said Act or said order.

That said Edward T. Young, as Attorney-General of the State of Minnesota, Ira B. Mills, Charles F. Staples, and William E. Young, constituting the Railroad and Warehouse Commission of said State, be temporarily and permanently restrained and enjoined from any attempt to compel the said Railway Company to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said order of May 3, 1907, or from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force, the rates, tariffs and charges prescribed by the said order of September 6, 1906, and that they further be temporarily and permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any penalties or remedy for the violation by the said Railway Company, or its officers, directors, agents or employés, of such orders of September 6, 1906, and May 3, 1907.

25 That said Edward T. Young, the Attorney-General, be temporarily and permanently enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and of April 18, 1907, or either of them.

And that the defendants, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of the said Railway Company, be temporarily and permanently enjoined and restrained from instituting or causing to be instituted any action for any violation of the said orders, or of the said Acts, or either of them, or from demanding that any of the rates, tariffs and charges contained therein, or either of them, be given to the said shippers, or any of them,

And that your Orators may have such other or further relief as may be just and equitable in the premises.

May it please your Honors to grant unto your Orators a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said Great Northern Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, commanding them and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (answer under oath being hereby expressly waived) all and singular the premises, and to stand to and for and abide by such order, direction or decree as may be made against them in the premises, and that, pending the final hearing of this cause, a temporary restraining order may be is-
26 sued as above prayed, and your Orators will ever pray.

JOHN S. KENNEDY,
HENRY F. DIMOCK,
By DE FOREST BROTHERS,
HOW, BUTLER & MITCHELL,
Solicitors.

ROBERT W. DE FOREST,
HENRY W. DE FOREST,
ROBERT THORNE,
JARED HOW,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

We, John S. Kennedy and Henry F. Dimock, upon oath, say that we are the complainants in the above entitled bill, which we have severally read and know the contents thereof, and the same is true of our own knowledge, except as to matter- therein stated on information and belief, and as to those matters we believe it to be true.

(Sgd.) JOHN S. KENNEDY,
HENRY F. DIMOCK.

Subscribed and sworn to before me this 26th day of May, 1907.

[L. S.] ARCHIBALD C. WEEKS,
Notary Public, Kings County.

Certificate filed in New York Co., State of New York.

27 EXHIBIT A.

An act prescribing the maximum rate to be charged for transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof.

SECTION 1. No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, shall

charge or collect more than two (2) cents per mile for carrying, over its road on any trip wholly within this state, any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred and fifty (150) pounds in weight, or more than one (1) cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five (75) pounds in weight.

SECTION 2. Any railroad company or any officer, agent or representative thereof, who shall violate any provision of this act, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the state prison for a period not exceeding five (5) years, or by both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after the 1st day of May, 1907.

28 EXHIBIT B.

An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission.

SECTION 1. For the purposes of this act the commodities hereinafter named are classified as follows: Wheat, flax seed, broom corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven (11); corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry), chopped feed, other than wheat chops, corn flour, corn meal, cotton seed cake, cotton seed hulls, cotton seed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oat meal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve (12); lumber, lath, shingles, sash, doors and blinds shall constitute class thirteen (13); sheep (when carried in double decked cars) and cattle shall constitute class fourteen (14); sheep (when carried in single decked cars) and hogs shall constitute class fifteen (15); hard coal shall constitute class sixteen (16); soft coal shall constitute class seventeen (17).

SECTION 2. The following are hereby established and declared to be the reasonable maximum rates to be charged by Railroad Companies as common carriers of property in the State of Minnesota, for the transportation, in car load lots, of the commodities belonging to the classes named in section one (1) of this act, between stations in the State of Minnesota for the distances named in the following schedules, to-wit:

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Distance and miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars and cents per ton.	Rates for commodities in classification No. 17 in dollars and cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	5.9	5.1	6.8	10.	11.3	.81	.64
60	6.1	5.3	7.0	10.2	11.5	.83	.65
65	6.3	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.4	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95

30

155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16

Distance and miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars and cents per ton.	Rates for commodities in classification No. 17 in dollars and cents per ton.
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59
340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

31 SECTION 3. When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a car load, within the meaning of this act the weight of the commodity in any one car shall be at least as follows: Class eleven (11) and class twelve (12), twenty-four thousand (24,000) pounds; class thirteen (13), twenty thousand (20,000) pounds; class fourteen (14), nineteen thousand (19,000) pounds; class fifteen (15) fifteen thousand (15,000) pounds; classes sixteen (16) and seventeen (17) thirty thousand (30,000) pounds.

SECTION 4. No Railroad Company, which is a common carrier of property within the State of Minnesota shall charge, take or receive any greater sum for carrying within this state, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided for in section two of this act for the respective distances therein named.

SECTION 5. This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute in this state. Whenever in a proceeding regularly pending before

the Railroad and Warehouse Commission, it shall be made to appear to the satisfaction of said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned, over the line of any railroad in this state, and such rates when so fixed shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such orders, and until such order shall have been made by
32 said Railroad and Warehouse Commission the rates herein prescribed shall be the conclusive legal maximum rates for the transportation of the commodities herein enumerated, between points within this State.

SECTION 6. Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it, between stations upon its line of railroad in this state, of the commodities named in this act; and every officer, director, traffic manager or agent or employee of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by said railroad company of rates not exceeding those specified in this act; and any officer, director or such agent or employee of any such railroad company who violates any of the provisions of this section, or who causes, or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon conviction thereof be punished by imprisonment in the county jail for a period not exceeding ninety days.

SECTION 7. If at the time of the taking effect of this act any railroad is maintaining a rate between any two stations in this state that is less than the rate herein prescribed for the same distance, this act shall not be construed as authorizing the raising of such rate.

SECTION 8. This act shall take effect and be in force from and after June 1, 1907.

33 EXHIBIT C.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges Between Stations in the State of Minnesota on the Several Lines of Railroad.

In the above entitled matter, the Commission having heard the evidence, finds as facts in relation to the merchandise rates on the line of the Great Northern Railway Company:

First. That the Great Northern Railway Company is a corporation organized and incorporated under the laws of the State of Min-

nesota, and is operating a railroad through various parts of the State of Minnesota and carries freight and passengers for hire.

Second. That the terminal and distance freight rates on merchandise now charged by the Great Northern Railway Company on classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown by the so-called "Western Classification," between stations in the State of Minnesota, are unreasonable.

Third. That the merchandise rates on classes 1, 2, 3, 4, 5, "A," "B," "C," "D," and "E," as shown in exhibit "A,"
34 hereto attached and made a part of this order (according to said Western Classification, with exceptions and changes made by the Minnesota Commission), are reasonable maximum rates between all stations on the line of the Great Northern Railway Company in the State of Minnesota, and what are known as terminal or distributing stations on said railway in said state, and that a rate five cents higher than the rate shown in exhibit "A" is a reasonable maximum rate between stations on the line of said railway in this state, neither of which is a terminal or distributing station.

It is therefore ordered, that the reasonable maximum rates on said classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E" are reduced and fixed at the rates shown in said exhibit "A" between all stations on the line of said railway in the State of Minnesota, and what are now known as terminal and distributing stations on said railway in said state, to-wit: Minneapolis, St. Paul, St. Cloud, Fergus Falls, Moorhead, Crookston, Sauk Center, Third River Falls, and such other stations as may hereafter be made terminal or distributing stations, and the Great Northern Railway Company is hereby forbidden to charge any higher rate than that named in said exhibit "A." This order does not prevent the charging of a lower rate than that provided by exhibit "A," but in case a less rate is charged on one class, all classes must be reduced so as to preserve the relative relations between classes fixed in exhibit "A."

Until the further order of the Commission, said Railway Company may charge a rate five per cent. more than shown in exhibit "A" for shipments between stations, neither of which is a terminal or distributing station.

35 This order shall be in force thirty days after its service.

Dated St. Paul, Minn., September 6th, 1906.

By the Commission,

A. C. CLAUSEN, *Secretary.*

NOTE.—1. The matter of joint rates will be the subject of a future order when the necessity for the same is presented.

2. When issuing a schedule of rates, the fraction of a cent, 1 to 24 one-hundredths may be dropped; 25 to 75 one-hundredths may be called one-half cent, and 76 to 99 one-hundredths may be called one cent.

3. In case the Railway Company, in putting in a new schedule of rates, fails to so adjust the "in" rates as to protect the jobbers at the distributing stations other than St. Paul, Minneapolis and Duluth, the Commission will undertake to make the necessary adjustment.

ST. PAUL, MINNESOTA, *September* 7, 1906.

Railroad and Warehouse Commission of Minnesota.

Schedule of Reasonable Maximum Terminal and Distributing Merchandise Rates.

When rates for exact distance are not shown, the rates for the next greater distance as shown on Tariff may govern.

Governed by Western Classification, with exceptions and changes made by the Railroad and Warehouse Commission of Minnesota.

Inter-station Distance rates (other than terminal or Distributing Rates) can be made based on 5% above the rates shown in this schedule.

When preparing a schedule of rates the fraction of a mill, 1 to 5/10ths may be dropped; 6 to 9/10ths may be called one mill.

Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.					SPECIAL CARLOAD CLASSES. In cents per 100 lbs.				
	1	2	3	4	Fifth class.	A	B	C	D	E
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
5 miles	12.00	10.00	8.00	6.00	4.80	5.40	4.20	3.60	3.00	2.40
10 miles	12.98	10.82	8.65	6.49	5.19	5.84	4.55	3.89	3.25	2.60
15 miles	13.96	11.63	9.31	6.98	5.58	6.28	4.89	4.19	3.49	2.80
20 miles	14.94	12.45	9.96	7.47	5.98	6.72	5.23	4.48	3.74	2.99
25 miles	15.92	13.27	10.61	7.96	6.37	7.16	5.57	4.78	3.98	3.18
30 miles	16.90	14.08	11.27	8.45	6.76	7.61	5.92	5.07	4.23	3.38
37 35 miles	17.88	14.90	11.92	8.94	7.15	8.05	6.26	5.36	4.47	3.58

GEORGE T. SIMPSON ET AL. VS.

40 miles	18.86	15.72	12.57	9.43	7.54	8.49	6.70	5.66	4.72	3.77
45 miles	19.84	16.53	13.22	9.92	7.94	8.93	6.94	5.95	4.96	3.97
50 miles	20.82	17.35	13.88	10.41	8.33	9.37	7.29	6.25	5.21	4.16
55 miles	21.80	18.17	14.53	10.90	8.72	9.81	7.63	6.54	5.45	4.36
60 miles	22.78	18.98	15.19	11.39	9.11	10.25	7.97	6.83	5.70	4.56
65 miles	23.76	19.80	15.84	11.88	9.50	10.69	8.32	7.13	5.94	4.75
70 miles	24.74	20.62	16.49	12.37	9.90	11.13	8.66	7.42	6.19	4.95
75 miles	25.72	21.43	17.14	12.86	10.29	11.58	9.01	7.72	6.43	5.14
80 miles	26.70	22.25	17.80	13.35	10.68	12.02	9.35	8.01	6.68	5.34
85 miles	27.68	23.07	18.45	13.84	11.07	12.46	9.69	8.30	6.92	5.54
90 miles	28.66	23.88	19.10	14.33	11.46	12.90	10.03	8.60	7.17	5.73
95 miles	29.64	24.70	19.76	14.82	11.86	13.34	10.37	8.89	7.41	5.93
100 miles	30.62	25.52	20.41	15.31	12.25	13.78	10.72	9.19	7.66	6.12
105 miles	31.60	26.33	21.06	15.80	12.64	14.22	11.06	9.47	7.90	6.32
110 miles	32.58	27.16	21.72	16.29	13.03	14.66	11.40	9.77	8.15	6.52
115 miles	33.56	27.97	22.37	16.78	13.42	15.10	11.75	10.07	8.39	6.71
120 miles	34.54	28.78	23.02	17.27	13.82	15.54	12.09	10.36	8.64	6.91
125 miles	35.52	29.60	23.68	17.76	14.21	15.98	12.43	10.66	8.88	7.10
130 miles	36.50	30.42	24.33	18.25	14.60	16.43	12.78	10.95	9.13	7.30
135 miles	37.48	31.23	24.98	18.74	14.99	16.87	13.12	11.24	9.37	7.50
140 miles	38.46	32.05	25.64	19.23	15.38	17.31	13.46	11.54	9.62	7.69
145 miles	39.44	32.87	26.29	19.72	15.78	17.75	13.80	11.83	9.86	7.89
150 miles	40.42	33.68	26.94	20.21	16.17	18.19	14.15	12.13	10.11	8.08
155 miles	41.40	34.50	27.60	20.70	16.56	18.63	14.49	12.42	10.35	8.28
160 miles	42.38	35.32	28.25	21.19	16.95	19.07	14.83	12.71	10.60	8.48
165 miles	43.36	36.13	28.90	21.68	17.34	19.51	15.18	13.01	10.84	8.67
170 miles	44.34	36.95	29.56	22.17	17.74	19.95	15.52	13.30	11.09	8.87

Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.					SPECIAL CARLOAD CLASSES. In cents per 100 lbs.				
	1	2	3	4	Fifth class.	A	B	C	D	E
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
175 miles	45.32	37.77	30.21	22.66	18.13	20.39	15.86	13.60	11.33	9.06
180 miles	46.30	38.58	30.86	23.15	18.52	20.84	16.21	13.89	11.58	9.26
185 miles	47.28	39.40	31.52	23.64	18.91	21.28	16.55	14.18	11.82	9.46
190 miles	48.26	40.22	32.17	24.13	19.30	21.72	16.89	14.48	12.07	9.65
195 miles	49.24	41.03	32.82	24.62	19.70	22.16	17.23	14.77	12.31	9.85
200 miles	50.22	41.85	33.48	25.11	20.09	22.60	17.58	15.07	12.56	10.00
210 miles	51.20	42.66	34.13	25.60	20.48	23.04	17.92	15.36	12.80	10.24
220 miles	52.18	43.48	34.78	26.09	20.87	23.48	18.26	15.65	13.05	10.43
230 miles	53.16	44.30	35.44	26.58	21.26	23.92	18.61	15.95	13.29	10.63
240 miles	54.14	45.11	36.09	27.07	21.66	24.36	18.95	16.24	13.54	10.83
250 miles	55.12	45.93	36.74	27.56	22.05	24.80	19.29	16.54	13.78	11.00
260 miles	56.10	46.75	37.40	28.05	22.40	25.25	19.64	16.83	14.03	11.22
270 miles	57.08	47.56	38.05	28.54	22.83	25.69	19.98	17.12	14.27	11.42
280 miles	58.06	48.38	38.70	29.03	23.22	26.13	20.32	17.41	14.52	11.62
290 miles	59.04	49.20	39.36	29.52	23.62	26.57	20.66	17.71	14.76	11.80
39										
300 miles	60.02	50.01	40.01	30.01	24.01	27.01	21.01	18.01	15.01	12.00
310 miles	61.00	50.83	40.66	30.50	24.40	27.45	21.35	18.30	15.25	12.20
320 miles	61.98	51.65	41.32	30.99	24.79	27.89	21.69	18.59	15.50	12.40
330 miles	62.96	52.46	41.97	31.48	25.18	28.33	22.04	18.89	15.74	12.59
340 miles	63.94	53.28	42.62	31.97	25.58	28.77	22.37	19.18	15.99	12.79
350 miles	64.92	54.10	43.28	32.46	25.97	29.21	22.72	19.48	16.23	12.98

360 miles.....	65.90	54.91	43.93	32.95	26.36	29.66	23.07	19.78	16.48	13.18
370 miles.....	66.88	55.73	44.58	33.44	26.75	30.10	23.41	20.06	16.72	13.38
380 miles.....	67.86	56.55	45.24	33.93	27.14	30.54	23.75	20.36	16.97	13.57
390 miles.....	68.84	57.36	45.89	34.42	27.54	30.98	24.19	20.65	17.21	13.77
400 miles.....	69:82	58.18	46.54	34.91	27.93	31.32	24.44	20.95	17.46	13.96
420 miles.....	70.80	59.00	47.20	35.40	28.32	31.86	24.78	21.24	17.70	14.16
440 miles.....	71.78	59.81	47.85	35.89	28.71	32.30	25.12	21.53	17.94	14.36
460 miles.....	72.76	60.63	48.50	36.38	29.10	32.74	25.47	21.83	18.19	14.55
480 miles.....	73.74	61.45	49.15	36.87	29.50	33.18	25.81	22.12	18.44	14.75
500 miles.....	74.72	62.26	49.32	37.36	29.89	33.62	26.15	22.42	18.68	14.94

40 EXHIBIT D.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Commodity Rates to Distributing Centers Hereinafter Named, on the Line of the Great Northern Railway.

This matter having come before the Commission, and the evidence therein having been taken and concluded on the 2nd day of May, 1907, the Commission finds that the following named places, all in the State of Minnesota, having heretofore enjoyed distributing rates, are entitled to be known as distributing centers or terminals, viz.:

East Grand Forks,	Breckenridge,
Fergus Falls,	Saint Cloud,
Sauk Center,	Thief River Falls,
Crookston,	Moorhead.

And that the rates named in "Exhibit C," hereto annexed, are reasonable maximum rates in carload lots from the terminals of St. Paul, Minneapolis and Minnesota Transfer to said distributing centers on the freight articles mentioned in said exhibit, and that the regulations and minimums marked upon said exhibit are reasonable minimums and regulations in regard to such rates.

It is therefore ordered, that the rates between St. Paul, Minneapolis and Minnesota Transfer and said distributing points above named, over the Great Northern Railway, are hereby fixed as in "Exhibit C"; and said Railway Company, is hereby forbidden to charge any higher or greater rates than the rates above named on the commodities named in "Exhibit C".

This order shall take effect on the 3rd day of June, 1907.

By the Commission,

A. C. CLAUSEN, *Secretary.*

Dated St. Paul, Minn., May 3rd, 1907.

41 "EXHIBIT C."

Referred to in the Commissioners' Order.

Railroad and Warehouse Commission Schedule of Reasonable Carload Commodity Rates.

ST. PAUL, MINN., *May 3rd,* 1907.

Commodities.

Cider and Vinegar, straight or mixed C. L., minimum weight 30,000 pounds.

Pickles, Kraut, Cucumber, Tomato, Cauliflower and Onion, also Vinegar, in tin cans, boxed or crated, in glass or stone, boxed or in

barrels, kegs, kits, pails or tubs; also Table Sauces, including Catsup, Horseradish, prepared, Mustard prepared, Pep-er Sauce and Salad Dressing, in glass, boxed; in tin cans, boxed or crated, or in bulk in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Condensed milk and Evaporated Cream, in glass, boxed, in cans, jacketed, boxed or crated, or in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Fruits, Vegetables, Cove Oysters and Catsup, in tin cans, boxed or crated, or in glass or stone jars, boxed, straight or mixed C. L., minimum weight 30,000 pounds.

Paper—Building, Roof and Wrapping, in bundles, rolls, boxes or crates; also Paper Bags in bundles, straight or mixed C. L., minimum weight 30,000 pounds.

Sugar (not Maple), C. L., minimum weight 30,000 pounds.

Syrup, Glucose Jelly, Molasses, Preserves and Fruit Butter,
42 in wood; in tin cans, boxed or crated, or in glass or jugs, boxed; C. L., minimum weight 30,000 pounds.

Coffee, green or roasted, in bags, barrels or drums, also in packages, tin cans or pails, crated or boxed, in straight or mixed C. L., minimum weight 24,000 pounds.

Rice, in bags or in packages, boxed; Straight or mixed C. L., minimum weight 30,000 pounds.

Beans, dry, in bags, C. L., minimum weight 30,000 pounds.

Canned Sardines, in tin cans, boxed or crated, C. L., minimum weight 30,000 pounds.

Reasonable Maximum Carload Commodity Rates Over the Lines of the Great Northern Railway Company on the Commodities Named in this Exhibit from St. Paul, Minneapolis and Minnesota Transfer.

To—	Rates in cents per 100 pounds.
East Grand Forks	21.79
Crookston	20.62
Thief River Falls	22.58
Fergus Falls	15.52
Breckenridge	17.48
Moorhead	18.66
Sauk Center	10.82
St. Cloud	6.50

(Endorsed:) Bill of Complaint. Filed May 29th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

43 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein named John Palm and L. Larson by handing to and leaving a true and correct

copy thereof with each of them personally at Litchfield in said District on the 10th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein named Great Northern Railway Company by handing to and leaving a true and correct copy thereof with R. I. Farrington, Vice President of above named company, and by exhibiting the original signature of the Judge personally, at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein named Edward T. Young, Attorney General for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him and by exhibiting Judge Lochren's Original Signature personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

44 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Ira B. Mills, Charles F. Staples, and Wm. E. Young, by handing to and leaving *with* a true and correct copy thereof with each of them and by exhibiting Judge Lochren's original signature personally at St. Paul in said District on the 1st day of June A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Order on the therein-named defendant Walter Scott, by leaving a true copy

thereof with him personally at Sandstone, in said District, the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Order on the therein-named defendant H. P. Webb by leaving a true copy thereof with him personally at Sandstone, in said District, the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed subpœna and order to show cause on the therein-named defendant Tom Gunness by leaving a true copy thereof for him, at the house of the usual abode of said Tom Gunness with Minnie Palmen, a person of suitable age and discretion then resident therein, at Barnesville, in said District, the 5th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By H. A. RIDER, *Deputy.*

45 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named S. S. Glarum by handing to and leaving a true and correct copy thereof with S. S. Glarum, by exhibiting Judge Lochren's original signature, personally, at Willmar, in said District, on the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED'K VAN DOREN,
Deputy.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on W. W. Broughton, General Traffic Manager, A. L. Craig, General Passenger Agent, and L. B. Tierney, City Ticket Agent, of the Great Northern Railway Company, by handing to and leaving a true and correct copy thereof with each of them and by exhibiting to each of them Judge Loch-

ren's original signature personally, at St. Paul in said District, on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Great Northern Railway Company, et al., by handing to and leaving a true and correct copy thereof with V. D. Jones, City Passenger and Ticket Agent of said Company, and by exhibiting Judge Lochren's Original Signature to him personally at Minneapolis in said District on the Third day of June, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

46 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

The complainants having filed their verified bill of complaint in this Court against the defendants above named, praying for a temporary and permanent injunction, and in the meantime for a restraining order, and this Court having duly read and considered said bill of complaint:

Now, on motion of How, Butler & Mitchell, Robert W. de Forest, Henry W. de Forest, and Robert Thorne, solicitors for said complainants,

It Is Ordered, That said defendants, and each of them, show cause before this Court, in the Federal Building, at Saint Paul, Minnesota, on the 12th day of June, 1907, at ten o'clock in the forenoon of that day, why a temporary injunction should not issue in accordance with the prayer in said bill of complaint contained.

That in the meantime, and until further order of the Court in the premises, the said defendant, Great Northern Railway Company, its officers, directors, agents and employés, be and they are hereby restrained from publishing or adopting the classifications, tariffs and charges set forth in the Act of the Legislature of
47 the State of Minnesota, approved April 18, 1907, and described in said complaint, or from reducing its tariffs to the figures set forth in said Act.

That in the meantime, and until the further order of the Court in the premises, said defendant, Edward T. Young, Attorney General of the State of Minnesota, is hereby restrained from taking, or causing to be taken, any action, step or proceeding against said Railway Company, its officers, directors, agents or employés, to enforce the penalties and remedies specified in said Act approved April 18, 1907.

That in the meantime, and until the further order of the Court in the premises, the said defendants, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and other shippers affected by this proceeding, and each of them, are hereby restrained from instituting any action for the violation of said Act approved April 18, 1907, or from demanding that any of the rates contained therein, be given to them, or either or any of them.

Dated May 31st, 1907.

WM. LOCHREN, *Judge.*

Endorsement: Restraining Order. Filed May 31st, 1907. Henry D. Lang, Clerk.

48 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Præcipe for Chancery Subpœna.

To the Clerk of Above Named Court:

Please issue Chancery Subpœna for each of the above named defendants, returnable at July Rules, and deliver the same to the Marshal for service.

Dated May 31st, 1907.

HOW, BUTLER & MITCHELL,
Complainants' Solicitors.

Endorsement: Præcipe for Chancery Subpœna. Filed May 31, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

49 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

1907, MAY 31.

The complainants herein having filed a Bill in Equity in this cause, on application of How, Butler & Mitchell Solicitors for said complainants, it is hereby ordered that a Chancery Subpœna issue as therein prayed.
C. R. "C" page 4.

50 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named John Palm and L. Larson by handing to and leaving a true and correct copy thereof with each of them personally, at Litchfield in said District, on the 10th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Great Northern Railway Company, by handing to and leaving a true and correct copy thereof with R. I. Farrington, Vice President of above named Company, personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Edward T. Young, Attorney General for the State of Minnesota, by handing to and leaving a true

and correct copy thereof with him personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

51 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Ira B. Mills, Charles F. Staples and Wm. E. Young, by handing to and leaving a true and correct copy thereof with each of them at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named defendant, Walter Scott, by leaving a true copy thereof with him personally, at Sandstone, in said District, the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named defendant, H. P. Webb, by leaving a true copy thereof with him personally, at Sandstone, in said District, the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

52 UNITED STATES OF AMERICA,
District of ——, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named S. S. Glarum by handing to and leaving a true and correct copy thereof with S. S. Glarum personally at Willmar in said District on the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED'K VAN DOREN, *Deputy.*

United States of America, District of Minnesota, 3rd Division.

The President of the United States of America to Great Northern Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of July next, at the city of St. Paul, then and there to answer the Bill of Complaint of John S. Kennedy and Henry F. Dimock, citizens of the State of New York, filed against you on the 31st day of May A. D. 1907; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 31st day of May, 1907.

Issued at my office in the city of St. Paul under the seal of said Circuit Court, the day and year last aforesaid.

[Seal United States Circuit Court, District of Minnesota, Third Division.]

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

53 MEMORANDUM.—The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

DE FOREST BROTHERS &
HOW, BUTLER & MITCHELL,
Complainants' Solicitors.

Endorsement: Chancery Subpœna (Original). Filed June 11th, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

54 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

It is ordered that the hearing on the order to show cause heretofore made herein, why a temporary injunction should not issue in accordance with the prayer in the bill of complaint herein con-

tained, be and the same hereby is continued to and until the 8th day of July, 1907, at ten (10) o'clock in the forenoon of that day.

That in the meantime, until the further order of the Court in the premises, the restraining order heretofore made herein be and the same is hereby in all things continued.

The right is reserved to Edward T. Young to make any special appearance herein for himself or for defendants Ira B. Mills, Charles F. Staples and William E. Young, and any motion herein founded thereon at any time prior to the Rule day in July, 1907.

Dated St. Paul, Minn., June 7, 1907.

WM. LOCHREN, *Judge.*

Endorsement: Order Continuing Hearing. Filed June 10, 1907. Henry D. Lang, Clerk.

55 In the Circuit Court of the United States for the District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

versus

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

To Henry D. Lang, Esquire, Clerk of the United States Circuit Court for the District of Minnesota:

You will please enter my appearance for the defendant Great Northern Railway Company in the above entitled suit.

Dated June 20, 1907.

WM. R. BEGG,
Solicitor for Defendant Great Northern Railway Company, Rosabel and Third Streets, St. Paul, Minnesota.

Endorsement: Appearance of Wm. R. Begg for the Great Northern Ry. Co. Filed June 18th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

56 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.

VS.

GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

JUNE 18, 1907.

This day comes the defendant Great Northern Railway Company by Wm. R. Begg, Solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered. C. R. "C" page 109.

57 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK

VS.

GREAT NORTHERN RAILWAY COMPANY et al.

Appearance.

The Clerk will enter our appearance for Ira B. Mills, Charles F. Staples and William E. Young, three of the defendants in the above entitled cause.

E. T. YOUNG,
THOMAS D. O'BRIEN,
ROYAL A. STONE,
C. S. JELLEY,
GEORGE T. SIMPSON,
Solicitors for said Defendants.

Endorsement: Appearance for Ira B. Mills, Charles F. Staples and William E. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

VS.

GREAT NOR. RY. CO., EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Def'ts.

Appearance.

The Clerk will enter my appearance for the defendants John Palm and L. Larson.

E. P. PETERSON,
Litchfield, Minn.

Endorsement: Appearance for John Palm and L. Larson. Filed July 1st, 1907. Henry D. Lang, Clerk.

58 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

JULY 1ST, 1907.

This day come the defendants Ira B. Mills, Charles F. Staples and William E. Young, by E. T. Young, T. D. O'Brien, C. S. Jelley, Royal A. Stone and George T. Simpson, Solicitors on whose motion it is hereby ordered that the appearance of said defendant- be and the same hereby is entered.

C. R. "C" page 110.

59 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

JULY 1ST, 1907.

This day come the defendants John Palm and L. Larson by E. P. Peterson, Solicitors on whose motion it is hereby ordered that the appearance of said defendant- be and the same hereby is entered.

C. R. "C" page 110.

60 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK

vs.

GREAT NORTHERN RAILWAY Co. et al.

Appearance.

The Clerk will enter my apearance for Tom Gunness, one of the defendants in the above entitled cause.

Dated June 29, 1907.

CHAS. S. MARDEN,
Attorney for Tom Gunness, Defendant,
Barnesville, Minnesota.

Endorsement: Appearance — Tom Gunness. Filed July 1st, 1907. Henry D. Lang, Clerk.

Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Appearance.

The Clerk will enter our special appearance for Edward T. Young, one of the defendants in the above entitled cause, the said special appearance being only for the purposes of the motion to dismiss filed by said defendant.

ROYAL A. STONE,
THOMAS D. O'BRIEN,
C. S. JELLEY,
GEORGE T. SIMPSON,
Solicitors for said Defendant.

Endorsement: Appearance for Edward T. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

61 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

JULY 1ST, 1907.

This day comes the defendant Tom Gunness by Chas. S. Jelley Solicitors on whose motion it is hereby ordered that the appearance of said defendant be and the same hereby is entered.
C. R. "C" page 110.

62 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Chancery Rule and Order Book.

JULY 1ST, 1907.

This day comes the defendant Edward T. Young by Royal A. Stone, Thos. D. O'Brien, C. S. Jelley & George T. Simpson, Solicitors on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered, as specified in the præcipe this day filed therefor.

C. R. "C." page 111.

63 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Motion to Dismiss as to Edward T. Young.

Comes now the defendant, Edward T. Young, the Attorney General of the State of Minnesota, and, appearing specially and only for the purpose of this motion, and not otherwise submitting to or acknowledging the jurisdiction of this Court in the premises, and expressly averring that the State of Minnesota has not and does not consent to the commencement of this action in manner and form as herein attempted, or otherwise, moves this Honorable Court to dismiss as to him the bill of complaint filed in the above entitled cause, and for the ground of this motion shows:

That it appears by the said bill that the same is exhibited by the complainants against this defendant as, and only as, the Attorney General of the State of Minnesota, and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young as Attorney General aforesaid, by writ of injunction, from proceeding in his official capacity, and not otherwise, and in the exercise of

an executive discretion thereby vested in him, to commence
64 the appropriate action or actions in the name of and on behalf of the said State of Minnesota, thereby restraining the State of Minnesota from proceeding by appropriate action or actions to enforce certain of its laws or to test the validity of the said laws; the said suit being, therefore, in truth and effect a suit against the said State of Minnesota as a party defendant, commenced against it without its consent, contrary to the Eleventh Amendment of the Constitution of the United States.

Wherefore, this defendant separately demands the judgment of this Honorable Court that the said bill of complaint be dismissed as to him.

EDWARD T. YOUNG.

ROYAL A. STONE,
GEORGE T. SIMPSON,
C. S. JELLEY,
THOMAS D. O'BRIEN,
Solicitors for said Defendant.

Endorsement: Motion to Dismiss as to Edward T. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

65 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Now comes Edward T. Young, one of the defendants above named, appearing specially and only in response to the Order to Show Cause why a temporary injunction should not issue as prayed for herein, and for cause why such temporary injunction should not issue as to him, shows:

That it appears by the Bill of Complaint exhibited herein, that the same is exhibited by the complainants against this defendant as, and only as the Attorney General of the State of Minnesota, and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young as Attorney General aforesaid, by Writ of Injunction, from proceeding in his official capacity, and not otherwise, and in the exercise of an executive discretion thereby vested in him, to commence the appropriate action or actions in the name of and on behalf of the said State of Minnesota, thereby restraining the

State of Minnesota from proceeding by appropriate action or
66 actions to enforce certain of its laws or to test the validity of the said laws; the said suit being therefore, in truth and effect a suit against the said State of Minnesota as a party defendant, commenced against it without its consent, contrary to the Eleventh Amendment of the Constitution of the United States.

Wherefore, this defendant prays that the said Order to Show Cause be discharged.

EDWARD T. YOUNG.

THOMAS D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

Endorsement: Motion to Dismiss Temporary Injunction as to Edward T. Young. Filed July 8th, 1907. Henry D. Lang, Clerk.

67 Circuit Court of the United States in and for the District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Now come the above named defendants Ira B. Mills, Charles F. Staples and William E. Young and reserving their right to make such further and other showing and proof as they may hereafter be advised is necessary and proper, pray this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon them in the above entitled cause be discharged as to these defendants upon the grounds and for the reasons that it is manifest:

I.

That no facts are stated in the bill of complaint exhibited by said complainants sufficient to show that they are entitled to any relief as against these defendants, whether as prayed in said bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged, as to several of which these defendants are in no way connected and in others of which some of the other defend-
ants are in no way interested or connected and said several
68 matters are so separate and distinct and the rights and interests of the defendants so different that the said matters and the said defendants cannot be properly joined in one action.

III.

That it manifestly appears by said bill that the same is exhibited against these defendants in their official capacity as members of and constituting the Railroad and Warehouse Commission of the State of Minnesota, and inasmuch as the relief sought against these defendants is to restrain their official action, the same is in effect and in truth a suit against the State of Minnesota and against its objection.

IV.

That it appears from said bill that these defendants' duties are and have been fully performed with reference to any proceedings by them concerning the order of the Railroad and Warehouse Commission of September 6th, 1906, attempted to be described in said bill; that the rates prescribed by said order are in full force and effect, by the voluntary act of the defendant railroad company, and constitute the only legal rates which may be charged for the transportation of the merchandise described in said order between stations in the state of Minnesota, and no other or different rates can be fixed except in the manner provided by the statutes of the state of Minnesota in that behalf enacted.

V.

That it appears from said bill of complaint that these defendants do not contemplate or threaten to take any action or proceeding with reference to the order of September 6th, 1906, or the acts of the Legislature of the State of Minnesota referred to in said bill.

69 VI.

That the statutes of the State of Minnesota, defining the powers and duties of the Railroad and Warehouse Commission, provide no penalty for failure to obey the orders of said Commission and the only method of enforcing compliance with an order of said commission is by a proceeding in mandamus in the District Court of Minnesota, and this Court will not make an order in restraint of such proceedings.

Wherefore these defendants pray that without any other or further showing of cause upon their part said rule and order be discharged as to them.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

EDWARD T. YOUNG,
GEORGE T. SIMPSON,
ROYAL A. STONE
THOMAS D. O'BRIEN,
C. S. JELLEY,
Solicitors for These Defendants.

Endorsement: Motion to Discharge Restraining Order as to Railroad & Warehouse Com. Filed July 8th, 1907. Henry D. Lang, Clerk.

70 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Motion to Discharge Restraining Order.

Now come the defendants, John Palm and L. Larson, and reserving their right to make such further and other showing and proof as they may be advised is necessary and proper, pray this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon them in the above entitled cause, be discharged as to them, upon the grounds and for the reasons that it is manifest—

I.

That no facts are stated in the bill of complaint filed by said complainants, sufficient to show that they are entitled to any relief as against these defendants, whether as prayed in said bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged as to several of which these defendants are in
71 no way connected and in others of which some of the other defendants are in no way interested or connected, and said several matters are so separate and distinct and the rights and interests of the defendants so different, that the said matters and the said defendants can not be joined in one action.

Wherefore, these defendants pray that without any other or further showing of cause upon their part said rule and order be discharged as to them.

JOHN PALM,
L. LARSON,
Defendants.

EDWARD P. PETERSON,
Solicitor for Said Defendants.

Endorsement: Motion to Discharge Restraining Order as to John Palm and L. Larson. Filed July 8th, 1907. Henry D. Lang, Clerk.

72 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

JULY 8TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

* * * * * * *

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come the parties to this cause by their respective solicitors and the motion of the defendant Edward T. Young for a dismissal of the bill of complaint filed in the above entitled cause as to him for the reasons therein stated, now coming on to be heard Mr. Edward T. Young appears specially for himself for the purpose only of said motion and argues the same on his behalf and Mr. Jared How appears for and argues in opposition thereto on behalf of the complainant.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon the said motion, it is by the Court ordered that the same be and it hereby is denied.

An exception is prayed on behalf of the said defendant to the said order denying the said motion and is allowed.

This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the complainants and Messrs. Edward T. Young, Royal A. Stone, Thomas D. O'Brien, C. S. Jelley and George T. Simpson, appearing on behalf of the defendants Ira B. Mills, Charles F. Staples and William E. Young, and the motion of the aforesaid defendants for a dismissal of the order to show cause heretofore issued and served upon them and returnable at this time and place, now coming on to be heard, the same is argued by the solicitors for the respective parties hereto and after hearing the arguments and statements of counsel thereon and being fully advised in the premises, after due consideration thereof it is by the Court ordered that the said motion be and the same hereby is denied.

An exception is prayed on behalf of the said defendants to the said order denying said motion and is allowed.

73 This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the com-

plainants and Messrs. Edward T. Young, Royal A. Stone, Thomas D. O'Brien, C. S. Jelley and George T. Simpson appearing on behalf of the defendant Edward T. Young, and the order to show cause heretofore issued and returnable at this time and place why a temporary injunction should not issue as therein prayed for, now coming on to be heard the same is presented to the Court solely upon the question as to whether or not it should be determined upon a final hearing upon this order to show cause that a temporary injunction shall issue, whether or not the same shall include the defendant Edward T. Young.

Mr. Jared How argues said order to show cause on behalf of the complainants.

Mr. Royal A. Stone argues in opposition thereto on behalf of the defendant Edward T. Young.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument upon the said order to show cause on behalf of the defendants.

And the hearing on said order to show cause not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at 10 o'clock.

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

74 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

JULY 9TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to this cause by their respective solicitors and the hearing upon the order to show cause heretofore duly issued why a temporary injunction should not issue as prayed for against the defendants and each of them which comes on at this

time solely upon the question as to whether or not if it shall be considered by the court upon a final showing upon this order to show cause that an injunction shall issue, whether or not the same shall include the defendant Edward T. Young, is resumed and continued as follows, to-wit:

Mr. Jared How argues upon said order to show cause on behalf of the complainants.

Mr. Thomas D. O'Brien argues in opposition on behalf of the defendant Edward T. Young.

Mr. C. W. Bunn argues upon said order to show cause on behalf of the defendant Railway company.

Mr. Thomas Wilson argues further upon said order to show cause on behalf of said Railway company.

Mr. Edward T. Young argues further upon said order to show cause on his own behalf.

75 And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes and concludes his argument upon said order to show cause on his own behalf.

Mr. Jared How argues in reply and conclusion upon said order to show cause on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto thereon and being fully advised in the premises, upon due consideration, it is by the Court ordered that if upon a final hearing of the order to show cause why a temporary injunction should not issue as therein prayed for it shall be determined that such injunction shall issue, the same shall include the defendant Edward T. Young.

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

76 Circuit Court of the United States for the District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
v.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Answer of Defendant Great Northern Railway Company.

The defendant Great Northern Railway Company, for answer to the complainants' bill of complaint herein, says:

I.

This defendant admits and avers that to the best of its knowledge, information and belief the allegations of the complainants' bill of complaint herein are, except as hereinafter stated, true.

77 II.

This defendant avers and says that the value of the railways controlled and operated by it as one connected system exceeds the sum of four hundred fifteen millions of dollars, and that said railways could not at the present time be reproduced for that sum; that this defendant owns practically the entire capital stock of the St. Paul, Minneapolis & Manitoba Railway Company, the Eastern Railway Company of Minnesota, the Duluth, Benson & Watertown Railway Company, the Willmar & Sioux Falls Railway Company, the Minnesota & Great Northern Railway Company, the Dakota & Great Northern Railway Company, the Brandon, Devils Lake & Southern Railway Company, the Montana & Great Northern Railway Company, the Great Falls & Canada Railway Company, the Spokane Falls & Northern Railway Company, the Washington & Great Northern Railway Company, and the Seattle & Montana Railroad Company, and has guaranteed the payment of the principal and interest of the bonds of said companies; that the total outstanding capital stock of this defendant is $150,000,000, and the total amount of outstanding bonds of said subsidiary companies so guaranteed by this defendant is more than $114,000,000; that the railways of all said subsidiary companies except those of the Willmar & Sioux Falls Railway Company, Montana Central Railway Company, Spokane Falls & Northern Railway Company, and Great Falls & Canada Railway Company, are operated by this defendant under leases thereof.

III.

This defendant further avers and says that to the best of its information and belief the adoption by it of the rate of two cents per mile for the transportation of passengers as provided and
78 required in and by said act of April 4, 1907, in the bill of complaint herein referred to, if applied to the business of this defendant for the year ended June 30, 1906, would reduce the revenues derived by this defendant from its passenger business local to and wholly within the State of Minnesota more than $485,000 for said year, and its revenue derived from interstate passenger business passing into and through the State of Minnesota more than $350,000 for said year; that the adoption and enforcement of the rates fixed in and by said order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, if applied to the business of this defendant for the year ended June 30, 1906, would have caused to this defendant a loss in its revenues on business local to the State of Minnesota of more than $331,651 for said year, and a loss in its revenues on interstate business passing into and through the State of Minnesota of more than $171,000 for said year. That the adop-

tion and enforcement of the rates fixed in and by said order of the Railroad and Warehouse Commission of the State of Minnesota of May 3, 1907, set forth and referred to in the bill of complaint, if applied to the business of this defendant for the year ended June 30, 1906, would have caused this defendant a loss in its revenues on business local to the State of Minnesota of more than $1,356 for said year, and a loss in its revenues on interstate business passing into and through the State of Minnesota of more than $3,736 for said year. That the rates attempted to be fixed in and by said act of April 18, 1907, referred to and described in the bill of complaint herein would, if adopted by this defendant and applied to its business for the year ended June 30, 1906, have reduced its revenues from business local to the State of Minnesota for said year more than $202,000, and its revenues from interstate business passing
79 into and through the State of Minnesota for said year more than $150,000, in addition to the reduction in its revenues caused by the voluntary reduction in its rates made by this defendant as hereinafter stated. That the total loss of revenue which would have resulted from said orders of September 6, 1906, and May 3, 1907, and from said acts of April 4, 1907, and April 18, 1907, if applied to the business of this defendant for the year ended June 30, 1906, on traffic local to the State of Minnesota and on its interstate traffic passing into and through the said state, would have largely exceeded the sum of $1,600,000. In addition to the reductions in rates made and attempted to be made in and by said orders and laws, this defendant did in September and October, 1906, voluntarily make large reductions in its rates, local to Minnesota and interstate, on wheat, coal and other commodities, which reductions, if applied to the business of this defendant for the year ended June 30, 1906, would have reduced this defendant's earnings from business local to Minnesota more than $205,000, and its earnings from interstate business passing into and through the State of Minnesota more than $298,285.

IV.

This defendant alleges that to the best of its information and belief the rates fixed in and by said orders and laws in said bill of complaint referred to and described, were and are insufficient to adequately compensate this defendant for the service necessary and required to be performed by it in the transportation within the State of Minnesota of the passengers and property named in and affected by said orders and laws, but notwithstanding this belief, by reason of the severe, excessive and immoderate penalties fixed and imposed by said acts of April 4, 1907, and April 18, 1907, and by reason of the multiplicity of prosecutions that might be and
80 would be commenced against it for failure to adopt said rates, and the impossibility of establishing in a criminal prosecution the unreasonableness of the rates fixed by said laws and orders, this defendant determined to and has put into effect all of said rates and charges so fixed by said orders and laws, save and except only the rates fixed in and by said act of April 18, 1907; and that this defendant would have adopted and put into effect such rates

had it not been enjoined by order of this court; all of which matters this defendant is ready and willing to aver, maintain and prove, as this honorable Court may direct; and therefore prays that this court enter such decree in the premises as to it shall seem just and proper.

WM. R. BEGG,
Solicitor for the Defendant Great Northern Railway Company.

81 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 16th day of July 1907, at St. Paul, in the County and state aforesaid, before me personally appeared E. Sawyer, who being first duly sworn deposes and says: That he is the Treasurer of the Great Northern Railway Company, the defendant in the foregoing answer; that he has read said answer and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

E. SAWYER.

Subscribed and sworn to before me this 16th day of July 1907.
[NOTARIAL SEAL.] EARLE W. McELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1911.

Endorsement: Answer of Great Northern Railway Company. Filed July 16th, 1907, Henry D. Lang, Clerk.

82 Circuit Court of the United States, District of Minnesota, Third Division.

858.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

This day come the parties to this cause by their respective solicitors, How, Butler & Mitchell, Jared How, Hobert A. De Forest, Henry W. De Forest, and Robert Thorne appearing on behalf of the complaina-t-, Mr. William R. Beggs appearing on behalf of the defendant the Great Northern Railway Company, and Messrs. E. T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson appearing for the defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, and the same coming on for hearing upon the application of the complainants for a temporary injunction herein:

By consent of all parties in open court—

It is ordered, that the hearing upon rule to show cause, issued herein May 31st, 1907, be continued until September 3rd, 1907, at 10 o'clock A. M.

It is further ordered that in the meantime and until the further order of this Court in the premises, the restraining order
83 issued in and made part of the order to show cause issued May 31st, 1907, and all the provisions thereof shall be and the same are hereby in all things continued in full force and effect.

It was agreed between the parties as follows:

That complainant may, if so advised, serve additional affidavits in support of the application for temporary injunction on or before the 23rd day of July, 1907;

That the defendants shall answer or demur on or before the rule day in August;

That all affidavits in opposition to complainants' affidavits shall be filed and copies served on complainants' attorneys at least ten days before the date to which said hearing is continued aforesaid;

That any defendant who shall demur shall serve upon complainants' counsel at least ten days before the date to which said hearing is continued, a copy of the answer which said defendant will file in case the demurrer is overruled.

Now it is ordered that the foregoing stipulations be and the same are hereby approved by the Court.

Dated July 16th, 1907.

By the Court: WM. LOCHREN, *Judge.*

Endorsement: Order Continuing Hearing on Order to Show Cause. Filed July 16th, 1907. Henry D. Lang, Clerk.

84 United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS et al., Complainants,

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.

C. W. Bunn, for N. P. Ry. Co.

Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley, George T. Simpson, for Railroad and Warehouse Commission.

C. Equity. No. 858.

JOHN S. KENNEDY et al., Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.

Wm. R. Begg, for G. N. Ry. Co.

Same appearances for Railroad and Warehouse Commission.

E. P. Peterson, for defendants Palm & Larson.

C. Equity. No. 859.

JAMES T. WOODWARD et al., Complainants,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
F. W. Root, for C. M. & St. P. Ry. Co.
Same appearances for Railroad & Warehouse Commission.

85 C. Equity. No. 860.

CRAWFORD LIVINGSTON et al., Complainants,
vs.
CHICAGO & NORTHWESTERN RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
Samuel A. Lynde, for C. & N. W. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 861.

GEORGE S. BREWSTER et al., Complainants,
vs.
CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
Thomas Wilson, for C. St. P. M. & O. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 862.

WILLIAM SCHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainant.
George W. Seevers, for M. & St. L. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

86 C. Equity. No. 863.

JOHN A. HUMBIRD, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY et al., Defendants.

Stiles W. Burr, for complainant.
Asa G. Briggs, for C. G. W. Ry. Co., et al.
Same appearances for Railroad and Warehouse Commission.
C. Louis Weaks, for C. H. Tripp.

C. Equity. No. 864.

FREDERICK C. BARROWS, Complainant,
vs.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY et al., Defendants.

John F. McGee, for complainant.
Alfred H. Bright, for M. St. P. & S. Ste. M. Ry. Co.
Same appearances for Railroad and Warehouse Commission.
R. J. Stromme, for E. Sauby.

C. Equity. No. 864.

JOHN J. CARLE, Complainant,
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainant.
McNeil V. Seymour, for C. R. I. & P. Ry. Co.
Same appearances for Railroad and Warehouse Commission.
C. Louis Weeks, for E. B. Swygart.

87 This cause came on for hearing before Honorable William Lochren, United States District Judge for the District of Minnesota, at the Federal Building, Saint Paul, Minnesota, on the eighth day of July, A. D. 1907.

The parties being present by their respective solicitors, the cause is fully argued and heard.

Whereupon, the court being duly advised in the premises, renders the following decision orally:

LOCHREN, *J.* (Orally):

The question now before the court is as to whether or not in case temporary injunction shall issue in these cases the same should include the name of Edward T. Young as Attorney General of this state; and that presents the question as to whether or not the rates as established by legislative enactment and authority are unconstitutional and amount to the taking of the property of the railway companies without due process of law. It is alleged in the bills of each case that the several stockholders complainants have applied to the officers of their respective railroad companies, asking them to take proceedings for the preservation of the alleged rights of the stockholders, and that the railroad companies through their officers have refused or declined to do so; therefore the stockholders having no one to represent them, and owning stock in the railroad companies, and being interested in the welfare of the companies *and* have been obliged to bring these suits themselves.

I apprehend there is no doubt that while a railroad company is represented by its officers, the stockholders ordinarily are not per-

mitted to proceed by themselves to protect the rights of the corporation; but where a corporation by its officers refuses to take proper action to protect its property, the stockholders themselves, as a matter of necessity, are empowered to take such action. I think
88 this view is upheld by the many similar cases referred to by counsel in this argument. The claim of the Attorney General is that these actions seeking to enjoin him are really suits against the state; that the state is the real party attempted to be proceeded against; and the eleventh amendment to the Constitution of the United States is referred to, which forbids a suit in law or equity against a state by a citizen of another state or by a citizen or subject of a foreign state.

There is no doubt that this goes to the extent claimed of forbidding any suit of that kind from bring brought in a federal court. There are other provisions also in the Constitution to be considered like that in the Fourteenth Amendment referred to, that no state shall interfere, deprive any person of life, liberty or property without due process of law. That is a provision which the courts must see is made effective, as well as the other. It is a provision which applies to a state. A state is not allowed to take private property without due process of law; and it is well settled with reference to public service corporations, that there the rates of compensation, for their services are fixed by state legislatures or administrative bodies acting under the authority of state legislatures, and those rates are made so low as not to be compensatory and not allow the business to be carried on at a fairly remunerative rate, then in fact private property is taken without due process of law; and any law to that effect, or any order of an administrative body to the same effect is unconstitutional; and a party must necessarily have some relief against wrongful acts of that kind. He must have the right to apply to the courts with the full expectation and certainty, in a proper case, of finding proper relief. Such a law or order if it does not afford proper com-
89 pensation for the services that are required of these corporations, does in fact become confiscatory, and is for that reason unconstitutional. It confers no authority upon any one who attempts to enforce it, and therefore courts step in by their equity powers of injunction to prevent attempts to enforce such enactment or order. If an officer of the state attempts to enforce such an enactment or order he has no protection in law for such action; he cannot be protected while acting under an unconstitutional law by the mere fact that he is an officer of the state which state has enacted or attempted to enact that same law.

It was claimed in the argument yesterday by the Assistant Attorney General that one of the purposes of that office is to test this constitutional question and to bring an action in the state court so that it may be determined whether the law is enforcible or not. Now the only action for which there is any provision that I have observed is by prosecution brought against either of the railroad companies or some of their agents or officials, in the nature of a criminal prosecution for disobedience to or failure to obey the law. It cannot be well

claimed that the constitutionality of that law in a case of this kind can be decided in an action of that sort. If an action of that kind were brought in a state court, an action of a criminal nature, the defense that the law was unconstitutional or confiscatory could not be made out in that court; nor could any proper remedy be granted. The presumption would be that the rates so fixed were reasonable. There is always a presumption in cases of that sort that the rates fixed by the legislature are reasonable. The court in the trial of a criminal case brought to recover penalties or fines, or seeking imprisonment of the party indicted would have no machinery or means to determine whether these rates were reasonable or unreasonable, or
90 whether they went to the extent of confiscation or not. It will be a very difficult question for any court to determine, mixed as these rates are, with rates fixed by the interstate commerce commission respecting interstate traffic, whether they were reasonable. It would be a very complex question for any court to determine as to the effect of those local rates, whether they were confiscatory or not. That matter certainly could not be determined in a criminal action brought for an alleged violation of those laws. Therefore there can be no remedy afforded by any state court in this case on the question as to whether as claimed in these bills of complaint the law is actually confiscatory and therefore unconstitutional; and the railroad companies and stockholders, if denied a remedy in this court, would be without remedy, they would be remediless; and the provisions of the Constitution which is intended to protect persons in the ownership of property as against a ... ...ld be rendered nugatory.

Now, with respect to whether the Attorney General should be included as a party in case the court should determine to grant an injunction. It seems to me that he must be so included, and if it should turn out that this law shall be held to be unconstitutional, it will be no protection to him. There is no other practical way to raise the question than by bringing a suit of this kind and making the Attorney General a party to it. There would be no purpose in going on with these actions if the Attorney General is left out. He is the person who it is alleged in the bills has threatened and is threatening to enforce these alleged unconstitutional rates; and if not enjoined of course he will be entirely free to proceed to enforce them. The one statute of the state which requires him in such a case to so proceed is Section 395 of the Statutes of Minnesota, and by that he is required in case he shall have evidence that a railway
91 company has committed any offense against the laws of the state, or has failed to exercise its franchises, or misused or abandoned them, to commence a prosecution against the railroad company at once. It is not a matter that is left to his discretion as to whether he shall proceed or not; the statute requires him to do so. As far as the alleged offenses for violation of this act are concerned, it seems to me that the direction to the Attorney General is just as potent as if it were included in the act itself.

I think therefore that if the showing shall be such that it will

appear to the court that an injunction should issue, then the Attorney General should be included in it; and that this is not within the decisions of the Supreme Court suit against the state, but against the Attorney General as an officer charged with the enforcement of these acts which are claimed to be unconstitutional.

This is as far, perhaps, as I need go at the present time.

Endorsement: Opinion on Motion to Dismiss Order to Show Cause as to Edward T. Young, Att'y Gen'l. Filed July 16th, 1907. Henry D. Lang, Clerk.

92 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Order Allowing Amendments to Bill of Complaint.

Upon motion of How, Butler & Mitchell,

Ordered, that the complainants have leave forthwith to file the attached amendments to their Bill of Complaint, without prejudice to the restraining order, and order to show cause heretofore issued, or to any other proceedings heretofore had. Fair copies of the amendments shall be forthwith furnished to the defendants without cost, and answers, motions, pleas or demurrers heretofore interposed may stand as answers, motions, pleas or demurrers upon the Bill as amended.

WM. LOCHREN, *Judge.*

Dated August 3rd, 1907.

93 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Amendments to Bill of Complaint.

Now come the complainants above named, and amend the Bill of Complaint heretofore filed in said cause, in the following particulars:

1. Strike out paragraph XIV of said Bill, and insert in lieu thereof the following:

"More than thirty days prior to the institution of this suit, and after the passage of said Acts, your Orators demanded of the President and managing Directors of the said Great Northern Railway Company that said rates prescribed in such respective Acts should not be put into effect, and that said corporation, its officers and directors institute proper suit or suits to prevent said rates from continuing or becoming effective, as the case may be, and to have the said Acts and each of them declared illegal; that the said corporation, its President and directors, have positively declined and refused
94 to comply with such demand of your Orators, or any part thereof; that the reason why said President and directors so declined and refused to comply with such demand was not in any manner because they considered said proposed rates would yield a fair and just return upon the capital invested, or would not be confiscatory, but because by reason of the severity of the penalties prescribed for the violation of said Acts they could not subject themselves and the property of the railroad to the ruinous consequences which would inevitably result from failure on their part to obey the said laws, a result which no action by themselves, their stockholders or directors could possibly prevent. Your Orators are advised and believe that the shareholders in the said Great Northern Railway Company are extremely numerous and widely scattered, living in this and many foreign countries; that it would have been impossible to procure a meeting of said shareholders within such time as would have been necessary in order that your Orators and other shareholders might have relief in the premises. This suit is not in any manner or to any extent a collusive one to confer on a Court of the United States jurisdiction of a case of which it could not otherwise have cognizance."

2. After said paragraph XIV insert the following:

"XIV*a*. Your Orators allege that said Acts of April 4, 1907, and April 18, 1907, are, and each of them is, in the penalties prescribed for their violation, so drastic, that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of confiscation of its property, and
95 the imprisonment for long terms in jails and penitentiaries of its officers, agents and employés, and for that reason your Orators allege that said Acts of April 4 and April 18, 1907, and each of said Acts, denies to the defendant Railway Company, and its stockholders, including the complainants, the equal protection of the laws and deprives it and them of their property without due process of law, and are, and each of said Acts is, for that reason, unconstitutional and void."

JOHN S. KENNEDY,
HENRY F. DIMOCK,
By WILLIAM D. MITCHELL,
Solicitor.

ROBERT W. DE FOREST,
HENRY W. DE FOREST,
ROBERT THORNE,
JARED HOW,
Of Counsel.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, William D. Mitchell, on oath say that I am one of the solicitors for the complainants in the above entitled Bill; that I have read the said Bill and know the contents thereof; that the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

WILLIAM D. MITCHELL.

Subscribed and sworn to before me this 3rd day of August, 1907.

[NOTARIAL SEAL.] ELEANOR TIGHE,
Notary Public, Ramsey County, Minn.

My Commission expires Sept. 25, 1908.

Endorsement: Order and Amendments to Bill of Complaint. Filed August 5th, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

96 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Demurrer.

Demurrer of Ira B. Mills, Charles F. Staples, and William E. Young.

Now come the above named defendants, Ira B. Mills, Charles F. Staples and William E. Young, jointly with each other but separately so far as concerns any of the other defendants named in said bill, and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:—

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against these defendants.

And these defendants for special grounds of demurrer further show:—

II.

That it appears by the said bill that the same is exhibited
97 against these defendants and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, these defendants are not in any manner interested or concerned, and that the said bill is altogether multifarious.

III.

That it appears by the said bill that the same is exhibited against these defendants as, and only as, members of and constituting the Railroad & Warehouse Commission of the State of Minnesota, and that the relief sought as against these defendants, is the judicial restraint of the executive action of these defendants.

IV.

That it appears by the said bill, that in so far as the same is exhibited against these defendants, it is in truth and effect exhibited against the State of Minnesota, and that this suit is in truth and effect one against the State of Minnesota, and commenced against it without its consent, and that this Court therefore has no jurisdiction to entertain the same.

Wherefore, and for divers other good causes or demurrer appearing in said bill, these defendants do demur thereto, and humbly demand the judgment of this honorable Court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
C. S. JELLEY,
GEORGE F. SIMPSON,
R. A. STONE,
Solicitors for Defendants Mills, Staples and Young.

98 I, R. A. Stone, one of the solicitors for the defendants Ira B. Mills, Charles F. Staples and William E. Young, in the above entitled cause, Do Hereby Certify that the foregoing Demurrer, in my opinion, is well founded in law.

R. A. STONE, *Solicitor.*

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Ira B. Mills, one of the Defendants in the above entitled cause, and joining in the foregoing Demurrer, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

IRA B. MILLS.

Subscribed and sworn to before me this 13th day of July, A. D. 1907.

[NOTARIAL SEAL.] THOS YAPP,
Notary Public, Ramsey County, Minnesota.

My Commission expires May 1st, 1913.

Endorsement: Demurrer of Ira B. Mills, Charles F. Staples and William E. Young. Filed August 5th, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Demurrer of Edward T. Young.

The Demurrer of the Defendant Edward T. Young.

Now comes the above named defendant, Edward T. Young, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against this defendant.

And this defendant for special grounds of demurrer further shows:

II.

That it appears by the said bill that this cause is in truth and effect a suit against the State of Minnesota commenced without its consent, and therefore in violation of the Eleventh Amendment to the Constitution of the United States.

III.

That it appears by the said bill that the same is exhibited against this defendant as, and only as, the Attorney General of the State

of Minnesota, and that the relief sought as against this defendant, is the judicial control and restraint of the executive and discretionary action of this defendant in his official capacity aforesaid, and not otherwise.

IV.

That it appears by the said bill that the same is exhibited against this defendant and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant does demur thereto, and humbly demand- the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG.

THOS. D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

101 I, R. A. Stone, one of the Solicitors for the Defendant Edward T. Young, in the above entitled cause, Do Hereby Certify that the foregoing Demurrer, in my opinion, is well founded in law.

R. A. STONE.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Edward T. Young, one of the Defendants in the above entitled cause, being duly sworn do say, that the foregoing Demurrer is not interposed for delay.

EDWARD T. YOUNG.

Subscribed and sworn to before me this 16th day of July, A. D. 1907.

C. LOUIS WEEKS, [NOTARIAL SEAL.]
Notary Public, Hennepin County, Minnesota.

My Commission expires May 17th, 1912.

Endorsement: Demurrer of Edward T. Young. Filed August 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

102 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Demurrer of John Palm and L. Larson.

Now come the above named defendants, John Palm and L. Larson, jointly with each other but separately so far as concerns any of the other defendants named in said bill, and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:—

I.

That the said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle complainants to any relief against these defendants.

And these defendants for special grounds of demurrer further show:

II.

That it appears by the said bill that the same is exhibited against these defendants, and the several other defendants therein named, for distinct matters and causes, in several thereof, as appears
103 by the said bill, these defendants are not in any manner interested or concerned, and that the said bill is altogether multifarious.

JOHN PALM,
LOUIS LARSON,
Defendants.

EDW. P. PETERSON,
Solicitors for Defendants John Palm and L. Larson.

I, Edw. P. Peterson, Solicitor for Defendants John Palm and L. Larson in the above entitled cause, Do Hereby Certify that the foregoing Demurrer, in my opinion, is well founded in law.

EDW. P. PETERSON, *Solicitor.*

STATE OF MINNESOTA,
County of Meeker, ss:

I, John Palm, one of the Defendants in the above entitled cause, and joining in the foregoing Demurrer, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

JOHN PALM.

Subscribed and sworn to before me this 2nd day of August, A. D. 1907.

[NOTARIAL SEAL.] EDWARD P. PETERSON,
Notary Public, Meeker County, Minnesota.

My Commission expires Oct. 24, 1913.

Endorsement: Demurrer of John Palm and L. Larson. Filed August 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

104 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Demurrer of Tom Gunness.

Now comes Tom Gunness, one of the above named defendants, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto, and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against this defendant.

And this defendant for special grounds of demurrer further shows:

II.

That it appears by the said bill that the same is exhibited against this defendant, and the several other defendants therein
105 named, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner

interested or concerned, and that the said bill is altogether multifarious.

TOM GUNNESS, *Defendant.*

CHAS. S. MARDEN,
Solicitor for Defendant Tom Guenness.

I, Chas. S. Marden, Solicitor for Defendant Tom Gunness in the above entitled cause, do hereby certify that the foregoing Demurrer in my opinion, is well founded in law.

CHAS. S. MARDEN, *Solicitor.*

STATE OF MINNESOTA,
County of Clay, ss:

I, Tom Gunness, one of the Defendants in the above entitled cause, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

TOM GUNNESS.

Subscribed and sworn to before me this 8th day of August, A. D. 1907.

[NOTARIAL SEAL.] ORRIS OLION,
Notary Public, Clay County, Minnesota.

My Commission expires Aug. 1, 1908.

Endorsement: Demurrer of Tom Gunness. Filed August 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

106 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

It is hereby stipulated that the demurrers to the Bill of Complaint heretofore interposed herein shall be brought on for argument before the above entitled Court on the 3rd of September, 1907, in the same manner and to the same effect as if the same had been duly set down for argument according to the usual course of procedure.

DE FOREST BROTHERS,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.
GEORGE T. SIMPSON,
Solicitors for Demurrants.

Endorsement: Stipulation. Filed August 30th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

107 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Answer.

The joint and several answer of the defendants Ira B. Mills, Charles F. Staples and William E. Young to the bill of complaint of the complainants above named, respectively shows:

These defendants now and at all times hereafter, saving and reserving unto themselves and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, say:

I.

They admit the residence and citizenship of the complainants is as alleged in the complaint. That the defendant, the Great Northern Railway Company is a corporation organized under the laws of the State of Minnesota. That the defendant Edward T. Young is a citizen of the State of Minnesota and is the Attorney General
108 of said State. That these defendants are the members of and constitute the Railroad & Warehouse Commission of the State of Minnesota and are residents of said State, and that the defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum are residents of the State of Minnesota.

They admit that the defendant Railway Company is operating lines of railway as a common carrier of passengers and freight in and through the States mentioned in the bill of complaint herein.

II.

These defendants admit that the lines of railway operated by the defendant Railway Company are operated as one entire system and upon information and belief admit that the stock of said Company outstanding represent- said whole system; they admit that a large part of the business of said defendant Railway Company is the transportation of interstate commerce, but these defendants deny that there is any necessary confusion or intermingling of the business transacted by said Railway Company, which is wholly local to each of the States in which it operates, with that which is inter-

state commerce, and allege that the amount and character of each and the cost and productiveness of each, are entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice amongst railroads for many years past.

III.

They believe and admit that the greater portion of defendants Railway Company's lines have been judiciously located, but defendants have been informed and believe that certain of said lines have not been, and therefore they deny, and believe the denial to be true, that all of said defendant's said lines have been judiciously located, and as to what portions and how much of said defendant's said lines have been judiciously located these
109 defendants require proof, if the same be necessary.

IV.

These defendants admit that the defendant Great Northern Railway Company owns practically the entire capital stock of the St. Paul, Minneapolis & Manitoba Railway Company, the Eastern Railway Company of Minnesota and the Willmar & Sioux Falls Railway Company, but as to whether said defendant Railway Company owns any of the capital stock of the Duluth, Benson & Watertown Railway Company these answering defendants have no knowledge or information sufficient to form a belief, and therefore pray that complainants be required to make proof thereof. And as to whether the said defendant Railway Company has guaranteed the bonds of said subsidiary railway companies in the sum of $83,119,939, or any other sum or sums, or in any amount, these answering defendants have no knowledge or information sufficient to form a belief, and they therefore pray that the complainants be required to make proof thereof. Defendants further allege that they have no knowledge or information sufficient to form a belief as to whether the outstanding capital stock of the Great Northern Railway Company amounts to the sum of $149,577,500, or to what sum or amount the outstanding capital stock of defendant Railway Company amounts to, and they pray that complainants be required to make proof thereof.

They are informed and believe it to be true, that the par value of the stock and bonds outstanding on account of said defendant Railway Company's said lines is greatly in excess of the actual original cost of constructing and equipping the same, and much greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same, and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of
110 Minnesota, is much less than the cost per mile as to the part of said lines which are without the State of Minnesota. That these defendants are unable to state the exact value of the said Company's property, either as to its whole line or as to that portion

within the State of Minnesota, and ask that the complainants be required to present proof thereof.

V.

Further answering these defendants aver that prior to the 6th day of September, 1906, in their official capacity as aforesaid, they made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Great Northern Railway Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota of the merchandise of the kind, quality and class described in Exhibit C attached to the complainants' bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the course of said investigation, due notice of the same having been given to the railway companies interested. That the defendant the Great Northern Railway Com- duly appeared, answered and took part in said proceeding, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter of said investigation and of said defendant Great Northern Railway Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates for the transportation between stations in the State of Minnesota by common carriers of merchandise of the kind and class described in Exhibit C; and these defendants as members of and constituting said Commission, duly heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant Great Northern Railway Company, and as a
111 result of said investigation and their consideration of the evidence adduced therein, defendants constituting the Railroad & Warehouse Commission as aforesaid, on the 6th day of September, 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the schedule of rates in said bill of complaint referred to and complained of and set forth in and by said Exhibit C, which said Exhibit C is hereby admitted to be a true and correct copy of the Order made on said day and schedule referred to in said Order of September 6th, 1906.

VI.

That defendants, in pursuance of their official duties in the premises, made said Order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and they now believe and allege, that the rates theretofore charged by said defendant Railway Company for the transportation of said commodities between stations in Minnesota, were on said Sept. 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonably large sum for the service rendered and yielding to said Railway Company an unreasonably high return, in that said rates, together with said defendant Com-

pany's other receipts from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VII.

That defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced to make the said Order by reason of the fact that after considering the evidence adduced at the said hearings, and other competent
112 and sufficient information, they were informed and convinced, and now allege believing it to be true, that the rates so fixed by them in their said Order of Sept. 6th, 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then and are now, in every respect, equal, just and reasonable as to the said defendant Railway Company and the complainants herein as stockholders of said defendant Railway Company and of the other stockholders of said Company; and defendants now aver that the said rates yield to said defendant Railway Company a fair return upon the present value of its property, including both its line and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascertained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvement thereon, the amount and market value of said Company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said Company, together with all other elements affecting the value of said property, which are proper to be considered.

VIII.

Further answering these defendants respectfully aver and submit that the said Orders of Sept. 6th, 1906 and May 3rd, 1907, and the said Act of April 18th, 1907, relate to and affect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to, nor do they in any manner, affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided in said Orders and Act can in any manner, affect, change or lower any other rate or rates maintained by said defendant Railway Company
113 which are just and reasonable, nor can the same constitute discrimination as to any other rate, if such other rate is just and reasonable in itself, nor effect, nor constitute discrimination as to any interstate rate maintained by the defendant Railway Company, whether reasonable or otherwise.

IX.

These defendants admit that if the said Orders of September 6th, 1906 and May 3rd, 1907, permit rates, or if either of the Acts of

the Legislature set forth and complained of in said bill of complaint did not in and of itself permit rates which would yield to defendant Great Northern Railway Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing said Orders and Laws and thereby compelling the defendant Railway Company to accept insufficient compensation for the service rendered, would be as complainants allege, if a compliance with said Orders and laws were to be enforced upon said Company, a confiscation of its property, a taking thereof without due process of law, and a denial as to said company and its stockholders of the equal protection of the law, and violative of the Constitution of the United States and especially the Fourteenth Amendment thereof. Further answering these defendants allege in truth and in fact, the rates provided for in and by said Order of Sept. 6th, 1906, are equal and just, and are more than adequate for the service performed; and that, after ample and full consideration of said rates by the defendant Railway Company, its officers, agents and directors, and as these defendants believe by the complainants, the said rates were duly accepted, adopted and promulgated by said defendant Rail-
114 way Company and went into full force and effect on or about the 15th day of November, 1906, and have ever since been maintained and used by said Company as its regular and duly published rates for the transportation of the merchandise described in Exhibit C, between stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railway Company, these complainants, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant Railway Company, or the complainants, or any other persons, since the same went into effect on November 15th, 1906.

XI.

These defendants admit that on the 3rd day of May, 1907, they duly made the Order referred to and described in said bill of complaint and attached thereto as Exhibit D thereof.

That as it appears from said Order (Exhibit D) the same is an extension of the terminal rates provided for in the Order of Sept. 6th (Exhibit C) to certain stations in the State of Minnesota; that the same considerations and conditions which entered into and controlled the validity of said Order of Sept. 6th, 1906, enter into and control said Order of May 3rd (Exhibit D), except that the effect of said Order upon the revenues of said defendant Railway Company is comparatively much less than is the said Order of Sept. 6th, 1907. All of the allegations hereinbefore contained with reference

to the Order of September 6th (Exhibit C) are applicable to and are hereby repeated as to said Order of May 3rd (Exhibit D).

115 XII.

These defendants further aver that as provided by the statutes of the State of Minnesota, the defendant Railway Company had the right to appeal to the District Court of the State of Minnesota from the Orders of the Commission so entered on Sept. 6th, 1906, and on May 3rd, 1907, within thirty days after the making thereof; that said District Court is a court of record and general jurisdiction, duly organized and existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; and said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates theretofore maintained by said defendant Company, as well as those fixed by the Orders of the Commission in said Orders of Sept. 6th, 1906, and May 3rd, 1907, would have been for trial before said Court de novo and upon such trial the order and findings of said Commission would have been only prima facie correct; that in said proceeding and upon said appeal all of the rights of said complainants would have been protected and every objection to the Orders of said Commission and every consideration which might be urged in opposition thereto, which may, can, or might be urged in this action, could and would have been considered by said District Court on said appeal. That as these defendants are informed and believe, no demand was ever made by said complainants, or either of them, upon said defendant Railway Company, its officers, agents or directors to appeal from the Orders of said Commission made and entered Sept. 6th, 1906, and May 3rd, 1907, or to take any step in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

116 XIII.

These defendants admit that if no appeal had been taken from the Orders of said Commission, and if the defendant Railway Company had not itself adopted and published the said Orders of said Commission hereinbefore referred to, nor have filed with said Commission its schedules of the rates and charges required by said Orders of said Commission, these defendants as such Commission would have, except for the Order of this Court, issued in this action, proceeded, upon the expiration of said time for appeal, to publish and promulgate said Orders, as provided by the statutes of the State of Minnesota, and thereafter had the defendant Railway Company still refused to comply with said Orders, these defendants as such Commissioners would have demanded of the Attorney General of the State of Minnesota, that he commence an action by mandamus in said District Court, in the name of the State of Min-

nesota and upon the relation of these defendants, to the end that the judgment of said Court might be obtained directing and commanding the defendant Railway Company to comply with the terms and provisions of said orders; that no other or different proceedings were ever contemplated, intended or threatened by these defendants, or so far as these defendants know, by any other person. That as these defendants are advised, the proceeding above described is the only proceeding which these defendants could take for the purpose of enforcing the Orders of the Commission dated Sept. 6th, 1906, and May 3rd, 1907, hereinbefore referred to, and that until the rendition of final judgment in said proceedings by mandamus, the defendant Railway Company, its officers, servants and agents, are subject to no fine or penalty, through, by or on account of said Orders whatever; nor is said Company in any manner subject to harassing litigation of any kind or to a multiplicity of suits by reason thereof.

117 XIV.

That in the proceeding by mandamus hereinbefore described as contemplated by these defendants, the Orders of the Commission would be only prima facie correct, and the defendant Railway Company would have full and adequate means and opportunity to defend against the same and to urge in such defense every consideration of law and equity, and every fact which the complainants might or could present to this Honorable Court on the trial of this action upon its merits; That said defendants are, as they are advised, confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railway Company to comply with said Orders is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins these defendants as prayed in the bill of complaint herein, that the complainants or said defendant Railway Company will be compelled to defend their rights in a multitude of actions and proceedings, or that they or it will be in any manner deprived of any defense or even hampered in maintaining each and every defense which it may have to the orders of the Commission entered Sept. 6th, 1906, and May 3rd, 1907, hereinbefore specified.

XV.

Further answering these defendants admit that on or about the 4th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act prescribing the maximum rate to be charged for the transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof;" and that a copy of said Act is attached to said bill of complaint marked Exhibit A; and these defendants further admit that on or about the 18th day of April, 1907, there was approved an Act of the
118 Legislature of the State of Minnesota, entitled—"An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad & Warehouse Commis-

sion," a copy of which is attached to said bill of complaint marked Exhibit B.

XVI.

These defendants aver that as provided by the statutes of the State of Minnesota, they have not, nor have either of them, any duty, official or otherwise, as members of the Railroad & Warehouse Commission, or otherwise, in connection with the maintenance or enforcement of said Acts of the Legislature, and they deny that they, or either of them, as members of said Railroad & Warehouse Commission, or otherwise, have contemplated or intended or threatened to bring any action or proceeding, or take any steps whatever, looking to the enforcement of the provisions of said Acts of the Legislature and they aver that no application has ever been made to them, or either of them, by the complainants or by said defendant Railway Company, its officers or agents, requesting the exercise by them of their right to modify or change any of the rates or charges provided for by said acts of the Legislature.

XVII.

Further answering these defendants aver that for many years last past the rates charged by the defendant Railway Company for the transportation of passengers within the State of Minnesota, have been unequal, unjust and exorbitant, and that the rates and charges fixed and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railway Company and its stockholders, an ample revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges of said defendant Company, properly chargeable to the said passen-
119 ger service, and such proper proportion of all of the other legitimate and proper expenses of said defendant Railway Company chargeable thereto, and to yield to said Company and its stockholders a fair and adequate return upon the value of the property invested in said business. These defendants respectfully aver that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not purport to nor does it in any manner affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided in said act can in any manner affect, change or lower any other rate or rates maintained by said defendant Railway Company, which is or are just and reasonable, nor can the same constitute discrimination as to any other rate or rates if such other rate or rates is or are just and reasonable, in itself, nor effect, nor constitute discrimination as to any interstate rate maintained by the defendant Railway Company whether the latter is reasonable or otherwise.

XVIII.

That prior to the 18th day of April, 1907, the rates and charges made by the defendant Railway Company for the transportation

between stations within the State of Minnesota of the commodities named in said Act, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railway Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; that the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railway Company and its stockholders, and in truth and in fact are proportionately still higher than the rates and charges fixed by said Railway Company for like services in the transportation of other freight in the State of Minnesota and elsewhere, and
120 that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railway Company and its stockholders, a revenue proportionately sufficient with its other revenues, to permit it to meet its operating expenses, fixed charges and all other proper and necessary expenses in connection with the operation of said Railway Company, and in addition thereto, a fair and adequate return upon the value of the property invested in the business of said Railway Company.

XIX.

Further answering these defendants aver upon information and belief, that no sufficient demand was ever made by the complainants upon the defendant Railway Company, its officers or directors, requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either of the Orders of the Railroad & Warehouse Commission or the Acts of the Legislature mentioned in said bill of complaint, and they aver upon information and belief, that this suit is wholly collusive and is brought, not for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Orders and Laws, but for the purpose of hindering, delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XX.

Defendants on their information and belief, deny that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of railway run. Defendants further deny that the rates for intra-state business per mile of haul should be in all cases greater than the rates per mile upon interstate busi-
121 ness, and allege that if such comparison is to be made in any case resort must be had to all the facts and circumstances surrounding the traffic in question. Defendants admit that the defendant Railway Company's operating and other expenses have increased to some extent, as alleged in the bill of complaint, but on information and belief deny that the said expenses have increased to the extent therein alleged, and on this behalf defendants aver that said Company's operating expenses, both as to traffic local to the

State of Minnesota, and its interstate traffic, and traffic in other states, for many years have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Company for purposes not authorized by law or the charter of defendant Railway Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to the defendants.

XXI.

Further answering these defendants aver that the defendant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Orders of said Commission of September 6th, 1906, and May 3rd, 1907, and the Act of the Legislature of April 18th, 1907, will be necessarily greatly increased in the near future; that said freight commodities are of a class and character which enable them to be transported at a very slight cost, as compared with other classes of freight, but notwithstanding that, these defendants charge the fact to be that under the tariffs and charges heretofore maintained by the defendant Company, the freights named in said Orders and said Act of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said Company from the operation of its lines of road local to the State of Minnesota.

122 XXII.

Further answering these defendants deny that the jurisdiction of this Court ought to have been, or can be, invoked in this cause, and they further deny that said complainants are entitled to the relief, or any part thereof, that their said bill of complaint demandeth.

These defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint, not admitting however, that there is any other matter or thing in said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, true to the knowledge or belief of these defendants, or either of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
ROYAL A. STONE,
T. D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
Solicitors for Defendants.

Endorsement: Answer of Ira B. Mills, Charles F. Staples and William E. Young. Filed Sept. 3d, 1907. Henry L. Lang, Clerk, by Louise B. Trott, Deputy.

123 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 3D, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
VS.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
VS.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Parson, Tom Gunness, and S. S. Glarum.

C. Equity. No. 862.

WILLIAM SHILLABER
VS.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 870.

HENRY A. JAMES
VS.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness & S. S. Glarum.

This day come the parties to the above entitled causes by their respective solicitors, Messrs. Jared How, Pierce Butler, Edward S.

Robert, Robert Thorne, Stiles W. Burr, John F. McGee,
124 appearing on behalf of the complainants and Messrs. Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson, appearing on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young and C. W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, William R. Begg, appearing on behalf of the defendant Great Northern Railway Company, F. W. Root, appearing on behalf of the defendant Chicago, Milwaukee & St. Paul, Railway Company, Samuel A. Lynde, appearing on behalf of the defendant Chicago and Northwestern Railway Company, Thomas Wilson, appearing on behalf of the defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company, George W. Seever appearing on behalf of the defendant Minneapolis & St. Louis Railway Company, A. G. Briggs, appearing on behalf of the defendants Chicago Great Western Railway Company, A. B. & S. Stickney, Ansel Oppenheim, L. S. Case, Wm. E. Pickney, L. P. Elmer F. Weyerhauser, J. W. Lusk, R. C. Wright and H. Fletcher, a and Alfred E. Boyesen appearing on behalf of the defendant Northwestern Fuel Company, Alfred H. Bright appearing on behalf of the defendant Minneapolis, St. Paul & Sault Ste Marie Railway Company, McNeil V. Seymour appearing on behalf of the defendant Chicago, Rock Island and Pacific Railway Company, and the same coming now on for hearing upon the orders to show cause heretofore issued in each of said causes, on the 29th and 31st day of May A. D. 1907, returnable on the 8th day of July A. D. 1907, and an order to show cause issued on the 19th day of August A. D. 1907, returnable on the 3rd day of September A. D. 1907, and which said orders to show cause were on the 8th day of July A. D. 1907, and thereafter postponed and continued for hearing from time to time to this time and place, and now coming on to be heard, upon the agreement and consent of the solicitors for the respective parties to the above entitled causes, it is by the Court ordered that the affidavits heretofore filed on behalf of the respective parties thereto may be used in each of said causes so far as the same are applicable thereto and that the arguments to be made by the respective solicitors hereto may be
125 considered as applying to al- of said causes so far as the same are applicable thereto and to the individual causes represented by said solicitors so far as directed thereto.

Mr. Jared How thereupon opens, states and argues said causes to the Court upon the said orders to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Stiles W. Burr argues further upon the orders to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler argues further upon the application for a temporary injunction and orders to show cause on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

126 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 4TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.
Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf
127 of the complainants.

And the trial of said cause not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until to-morrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

128 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 5TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes and concludes his argument upon the

order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues upon the order to show cause and application for a temporary injunction on behalf of the complainants.

129 And the hearing of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

130 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 5TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 875.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Robert Thorne resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. John McGee argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

131 Mr. John F. McGee resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

132 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 9TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and applica-

tion for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. John F. McGee resumes anc concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants:

Mr. Stiles W. Burr argues further upon the order to show cause and application for a temporary injunction, on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The court resumes proceedings at teo o'clock P. M.

133 Mr. Edward S. Robert argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues further upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

134 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 10TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Jared How argues further upon order to show cause and application for a temporary injunction on behalf of the complainants.

Stiles W. Burr, Esq., argues further upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

135 Mr. Stiles W. Burr, resumes and concludes his argument upon said order to show cause and application for a temporary injunction in behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

136 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 11TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien opens, states and argues upon said order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
137 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

138 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

It is hereby stipulated and agreed, subject to the approval of the court, that the two above entitled actions shall be consolidated. That the demurrers of the Bill of Complaint heretofore filed in the Kennedy action shall apply to and be deemed demurrers in the James case, and that the issues of law raised thereby shall be heard and determined on the 3rd day of September, the date set by agreement for the argument of the demurrers in the Kennedy suit with like effect as though the said demurrers had been duly filed in the James case, and the said demurrers duly brought on for argument in regular course. That all affidavits heretofore filed in

the Kennedy suit shall apply to, and be deemed to be filed in
139 the James suit and shall form a part of the record of the James suit on the motion for a temporary injunction, and all affidavits hereafter filed in the Kennedy suit shall likewise apply to and be deemed filed in the James suit.

That if the demurrers shall be overruled and answers filed in the Kennedy action, the said answers shall stand as the answers of the answering defendants in the James suit, and be deemed a part of the record in that suit.

That the said two suits shall proceed concurrently, but that separate orders and decrees be made in each suit upon any decision or determination of the Court.

DE FOREST BROTHERS,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.
E. T. YOUNG, *Att'y Gen. Minn.*,
Solicitor for Defendants.

Endorsement: Stipulations for Consolidation and Order. Filed September 11th, 1907. Henry D. Lang, Clerk.

140 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Order Directing Consolidation of Actions.

Upon reading and filing the annexed stipulation signed by the solicitors for the parties in the two above entitled suits,

It is ordered that the said two above entitled suits shall be consolidated; that the demurrers to the Bill of Complaint heretofore filed in the Kennedy suit shall apply to and be deemed demurrers in the James suit, and that the issues of law raised thereby shall be heard and determined on the 3rd day of September, 1907, the date set

by agreement for the argument of the demurrers in the Ken-
141 nedy suit with like effect as though said demurrers had been duly filed in the James suit, and the said demurrers duly brought on for argument in their regular order; that the affidavits heretofore filed in the Kennedy suit shall apply to and be deemed to be filed in the James suit, and shall form part of the record in the James suit on the motion for a temporary injunction, and all affidavits hereafter filed in the Kennedy suit shall likewise apply to and be deemed to be filed in the James suit;

That the answers heretofore provisionally filed in the Kennedy suit shall be deemed to be likewise provisionally filed in the James suit, and if the demurrers shall be overruled the said answers shall stand as the answers of the answering defendants in the James suit, and be deemed a part of the record in that suit;

That the said two suits shall proceed concurrently but that separate orders and decrees shall be made in each suit on any decision or determination by the Court.

Dated September 10, 1907. WM. LOCHREN,
District Judge.

142 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 11TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Youn*r*, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

C. Equity. No. 858.

JOHN KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

Order Directing Consolidation of Actions.

Upon reading and filing the annexed stipulation signed by the solicitors for the parties in the two above entitled suits,

It is ordered that the said two above entitled suits shall be consolidated; that the demur-ers to the Bill of Complaint heretofore filed in the Kennedy suit shall apply to and be deemed demurrers

in the James suit, and that the issues of law raised thereby shall be heard and determined on the 3rd day of September 1907, the date set by agreement for the argument of the demurrers in the Kennedy suit with like effect as though said demurrers had been duly filed in the James Suit, and the said demurrers duly brought on for argument in their regular order; that the affidavits heretofore filed
143 in the Kennedy suit shall apply to and be deemed to be filed in the James suit:

That the answers heretofore provisionally filed in the Kennedy suit shall be deemed to be likewise provisionally filed in the James suit, and if the demurrers shall be overruled the said answers shall stand as answers to the answering defendants in the James suit, and be deemed a part of the record in that suit;

That the said two suits shall proceed concurrently but that separate orders and decrees shall be made in each suit on any decision or determination by the Court.

Dated September 10th, 1907. WM. LOCHREN, *Judge.*

A true record,
Attest: HENRY D. LANG, *Clerk.*

144 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 12TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHELLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and applica-

tion for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
145 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until to-morrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

146 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 13TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on

147 behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until next Monday morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

148 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 16TH, 1907.

Monday morning.—Court opened pursuant to adjournment:

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes and concludes his argument upon the order to show cause and application for a temporary injunction therein on behalf of the defendants Edward Y. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. F. H. Peterson argues upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

149 The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. F. H. Peterson resumes and concludes his argument on the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Royal A. Stone argues upon said order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples nd William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

On Motion of Mr. Royal A. Stone, is by the Court ordered that the appearance of Mr. F. H. Peterson as an additional solicitor on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, be and the same hereby is entered of record.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

150 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 17TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Royal A. Stone resumes and continues his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument on the order to show cause and application for a temporary injunc-
151 tion on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

152 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 18TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Edward T. Young argues upon the order to show cause and application for a temporary injunction on behalf of himself and the defendants Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Thomas Wilson argues upon the said order to show cause and application for a temporary injunction on behalf of the defendant, The Chicago, St. Paul, Minneapolis & Omaha Railway Company,

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues in reply upon the said order to show cause and application for a temporary injunction on behalf of the complainants.

153 And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest: HENRY D. LANG, *Clerk.*

154 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 19TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction thereis is resumed and continued as follows, to-wit:

Mr. John F. McGree argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward S. Roberts argues in reply upon the said order to Show cause and application for a temporary injunction on behalf of the complainants.

155 Mr. Pierce Butler argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning ta ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

156 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 20TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day comes again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and applica-

tion for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Stiles W. Burr argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

157 Mr. T. D. O'Brien argues upon the order to show cause and application for a temporary injunction on behalf of the defendants.

The Court resumes proceedings at two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

And now having heard the arguments and statements of the solicitors for the respective parties to the above entitled cause upon the said order to show cause and application for a temporary injunction, and being fully advised in the premises, upon due consideration thereof, the Court renders an oral decision, directing that the same be transcribed and filed and that the solicitors for the respective parties hereto prepare orders in accordance therewith to be signed filed and entered.

Ordered: That the Court do now adjourn until Monday morning next at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

158 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 23RD, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come the parties to these causes by their respective solicitors, and in accordance with the decision heretofore rendered and entered herein, it is by the Court ordered, that the demurrers of the defendants, and each of them, in the above entitled causes be and the same hereby are overruled, and that the said defendants in said causes, and each of them, other than the defendants Ira B. Mills, Charles F. Staples and William E. Young, have until the rule day in November within which to file their answer to the bills of complaint in said causes and each of them.

* * * * * * *

159 Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

160 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Upon motion by counsel for complainants, and upon reading affidavits in support thereof and in opposition thereto, and after hearing counsel for complainants and for defendants,

This Court doth order that the defendant Great Northern Railway Company, its officers, directors, agents, servants and employés, and each of them, be restrained and enjoined pending the final hearing of this cause, and until the further order of this Court in the premises, from publishing, adopting, or putting into effect the tariffs, rates, or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That the defendant Edward T. Young, as Attorney General of said State of Minnesota, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this
161 Court in the premises, from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof;

That the defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, and each of them, and all other persons, and each of them, from and after the time that they shall have knowledge of this Order, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from taking or instituting, or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them. Let a writ issue accordingly.

WM. LOCHREN, *Judge.*

Dated September 23, 1907.

Endorsement: Order for Temporary Injunction. Filed September 23rd, 1907. Henry D. Lang, Clerk.

162 United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

163 C. Equity. No. 859.

JAMES T. WOODWARD and WILLIAM WOODWARD and GEORGE GIBBS
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 860.

CRAWFORD LIVINGSTON and JAMES T. WOODWARD
vs.
CHICAGO & NORTHWESTERN RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 861.

GEORGE S. BREWSTER and ROBERT S. BREWSTER
vs.
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

164 C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, and WILLIAM E. YOUNG.

C. Equity. No. 863.

JOHN A. HUMBIRD
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY, a Corporation; Alpheus B. Stickney, Ansel Oppenheim, Sam C. Stickney, Lewis S. Cass, William E. Pinckney, James P. Elmer, Frederick Weyerhaeuser, James W. Lusk, Robert C. Wight, H. E. Fletcher, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, C. F. Berg, C. H. Tripp, N. P. Johnson, The Northwestern Fuel Company, a Corporation; Western Elevator Company, a Corporation; Lampert Lumber Co., a Corporation; Hubbard Milling Company, a Corporation; Wisconsin Lumber Company, a Corporation; The Simmons Milling Company, a Corporation, and Laird Norton Company, a Corporation.

165 C. Equity. No. 864.

FREDERICK C. BARROWS
vs.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Pine Tree Lumber Company, E. Sauby, and Osborn & McMillan Elevator Company.

C. Equity. No. 865.

JOHN J. CARLE
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Daniel L. Bell, E. B. Swygart, and P. J. Bowlin.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

166 LOCHREN, J. (orally):

Gentlemen, I feel that it is a subject of congratulation that through this long-continued contest there has been such uniform courtesy displayed by counsel on both sides, not only towards the court, but towards each other. The cases have been fully and ably presented to the court, upon both sides. If circumstances permitted, I should be glad to give the cases further consideration than I feel myself able to. In view of the necessity of attending to other business, and especially in view of the fact that the October term in Minneapolis is coming on, I think it better that I dispose of the cases

according to my first impressions than to detain them for further examination, which would hinder the ultimate settlement of the issues.

These suits have been brought by one or more stockholders of each of nine railroad companies doing business within the State of Minnesota, and each of them also engaged in interstate business, claiming that the rates fixed by the Railroad and Warehouse Commission, and which have been termed by counsel the "Merchandise rates," as well as the rates fixed by the legislature of the state by the act of April 4th of the present year (called the passenger rate law), and the rates also fixed by the legislature by the act of April 18th of the present year (chapter 252 of the statutes of this year) are so low as to not afford adequate compensation to the railroad companies for the services that they are required to perform and a reasonable return upon the property which is invested by these railroad companies, and used in the business, and therefore are confiscatory under the provisions of the constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law, or deny equality under the laws;

that the requiring of the railroad companies to do business
167 at these rates would not afford adequate compensation, and are equivalent to taking their property without due process of law. These bills of complaint are met by demurrers upon various grounds, one of which is, that, being brought against the attorney general and other state officers, but especially the attorney general, they, in fact, amount to actions brought against the state, which are prohibited, so far as the federal courts are concerned, by the eleventh amendment to the constitution of the United States. This matter I disposed of at a preliminary hearing, contrary to that contention, holding that although the state is interested in this matter, these suits are not, in terms nor in necessary effect, actions against the state. No property of the state is affected; no revenues of the state are affected, by the result of the litigation. And although the eleventh amendment to the constitution prohibits suits, or actions, against the state, by citizens of another state or of a foreign country, the fourteenth amendment provides that the state shall not deprive any person of life, liberty or property without due process of law. There must be some way to enforce that provision of the constitution. It is a provision which requires no action of congress to make it effective. It is a prohibition against the state. And if the state, by any act attempts to deprive anyone of life, liberty or property, without due process of law, the courts must provide some adequate remedy for the protection of such person. It would be a reproach to the courts did they fail to provide an adequate remedy in a case of that sort. And it is unnecessary in these cases to hold that the eleventh amendment would be ineffective as against the later provision, in the fourteenth amendment, if the remedy can be reached in another way; and it seems to me that it can—by tying

the hands of the officers of the state, if necessary, in a proper
168 action, and restraining them from attempting to enforce or put in effect a provision of the law of the state which is un-

constitutional under the terms of the fourteenth amendment. This has been done in so many cases that it seems to me it does not now require argument to sustain that position. And I therefore hold that that ground of the demurrer is not well taken.

Another ground is that the bills are multifarious, in joining the Warehouse and Railroad Commission and the attorney general, because the acts complained of are separate and distinct acts and the acts of different bodies. The order of the Railroad and Warehouse Commission, of September 6th of last year, was promulgated by that commission under the authority of a legislative act; and, as has been decided in many cases, such an order has the same effect as a legislative act; that is, that the legislature has a right to empower administrative bodies to act in respect to this matter of rates and other matters of regulation concerning public corporations engaged in the business of transportation, so that its order has the same effect as a legislative act. And the other two acts complained of are acts passed by the legislature. They all amount to legislation that has been put forth by the state. And it seems to me that complaints against all these acts may properly be joined in one action, and that the Railroad and Warehouse Commission have such charge in respect to the enforcement of these rates that they can properly be made defendants in an action of this kind, as well as the attorney general.

Another objection is that the bills do not show compliance with the 94th Equity Rule, such compliance being necessary to permit actions of this sort to be brought by stockholders, whereas, matters in which a corporation is concerned are properly under the
169 management only of the officers and directors of the corporation, who should ordinarily be parties to an action to enforce corporate rights, and providing that such suit will not be allowed to be maintained by a stockholder unless it appears that he has first applied to the officers and directors of the corporation, demanding that they should enforce the rights which he complains are being infringed, and secure the safety of his property, the property being, of course ultimately the property of the stockholders, and only upon their refusal to do so will he be allowed to bring an action to protect himself. It seems to me that that has been done sufficiently in these cases. In every one of them an application has been made, either to the directors or to the controlling officers of the corporation whose duty it would be, in a proper case, if it was necessary, to call a meeting of the directors to act upon the matter, and either where the directors have met together or where the matter has been disposed of by the officers, the stockholders have been met with a direct refusal to take any action to protect the property against these alleged illegal attacks upon it. The reason alleged by the officers of the company and by the directors for not taking such action was, not that they doubted or denied the claim of the stockholders that this order and these acts were confiscatory, and null and void under the constitution, but that by the provisions of the acts themselves such severe penalties were denounced for any attempted violation of the acts, that they ought not to be called upon to incur the danger of

those penalties, and would not assume that danger, and, for that reason, would not act in the matter. And it seems to me, in view of the severe penalties denounced by these acts of the legislature, that the officers of the corporations could not have done otherwise than to have refused to act under those circumstances, where their
170 action would have laid them liable to severe penalties; and every subordinate who under their direction should attempt to violate these provisions, being also liable to like penalties, would also refuse. There is no question but that such legislation is vicious, almost a disgrace to the civilization of the age, and a reproach upon the intelligence and sense of justice of any legislature which could enact provisions of that kind. In case of the refusal to issue a ticket at a certain rate which is fixed by the legislature as proper, but which the railroad companies hold to be void and unconstitutional, (and which would be an act of itself not immoral nor malum in se, but would ordinarily afford the person who was refused the privilege of a ticket a right of action against the railroad company,) in case he was in the right and the refusal was wrong, there would be no question but that in a civil action any such person would receive an adequate remedy; there would be no danger that any court or jury would refuse to give ample damages. Beyond question, the result of actions of that kind would be that the damages would almost certainly border on the excessive, instead of failing to remunerate the party for any wrong he would suffer on account of such a refusal. But under the provisions of these laws, acts not immoral or wrong in themselves, but which are only unlawful because prohibited, would entail upon the person refusing to comply with such laws the position of being convicted of a felony. They make the refusal a felony, and impose a punishment very unusual—a fine that might be to the amount of $5,000, or imprisonment in the state prison to the extent of five years, or both, in the discretion of the court; punishments which are applied only to the very highest crimes short of homicide of which men are ever guilty; pun-
171 ishments which would be deemed adequate in cases of burglary, highway robbery, or crimes of the highest character, shorter, as I say, of homicide. There is no doubt that the directors and officers of railroad companies were entirely justified in refusing to take the hazard that would fall upon them (and their employees, if they acted under their advice) by taking any steps to save the stockholders from the consequences of these laws.

I agree with counsel for the defendants that these matters must be considered separately. For instance, the order of the Commissioners of September 6, 1906, which went into effect on November 15th of the same year, must be considered by itself upon the charge that it did not afford adequate compensation to the railroad companies and had the effect of confiscating their property. If it did not have that effect, it would not have that effect if the subsequent acts added to it had that effect. And so with the act of April 4th—the passenger act. If that did not reduce the revenues of the companies to a degree which would leave them without sufficient compensation, even after the reducing effect of the order of the commis-

sioners, then that would not be unconstitutional, it would be constitutional and proper. And the same remarks would apply to the act of April 18, which affected the rates chargeable upon commodities. It would have to be considered, of course, with reference to the reductions theretofore made by the two previous acts; but if that still left enough to compensate the railway companies for their services rendered in the transportation, and left an adequate return upon the value of the property which was used in the transportation within the state, the complainants would have no cause for complaint. But of course the latter act must be considered with reference to the reductions made in the earlier order and the
172 earlier act. Now I will not attempt—it would be impossible that I should do so—to go through with the different estimates that have been made in respect to the expenses of the railroads in the transportation of freight and passengers, state and interstate, and what is applicable to the state properly.

It is argued that this court has not jurisdiction of the case because it does not raise any federal question, for the reason that there is no controversy as to the effect of the constitutional provision in the fourteenth amendment, that I have referred to, because it is admitted on the part of the defense that the construction claimed for that provision by the complainants is the true construction and that there is no controversy in relation to it, and that the only controversy arising upon this hearing is in relation to matters of fact alone. With respect to that, I might say that there is not really any controversy in respect to matters of fact, until we come to the ultimate facts in the case. There is no controversy as to what the order of the Railroad and Warehouse Commission actually was; there is no controversy as to the terms of that order or its effect upon the different articles of merchandise in respect to which it fixes the rates; there is no controversy in relation to the purport of the two different acts of the legislature to which I have referred; there is no controversy with respect to the showing which has been made by the railroad companies as to the cost of transportation, their operating expenses in the past, and the anticipated increase in those expenses in the present year; nor is there any controversy with respect to the amount invested in these railroad properties, in the first place,—there has been no attempt to show that they are different from what they are claimed to be in the showing
173 made by the railroad companies themselves; nor with respect to the fixed charges, which are encumbrances upon these different properties, nor with respect to the amount of stock outstanding in these different companies. In relation to some of them, (the Chicago Great Western in particular) I believe that the evidence is that there are no outstanding bonds—anything which is usually reckoned by railroad companies as among their fixed charges; but it does appear that there are outstanding debentures, and that there are classes of preferred stock—several of them, each class in its order being allowed a certain amount of dividend before the next class in order would be entitled to any, and so on until we come to the common stock. And I am inclined to think

that debentures of that kind, and preferred stock, which is entitled to dividends before anything goes to the common stock, are very much of the same nature as bonds or securities—which would be entitled to the payment of interest upon them before there would be any dividends on the preferred or common stock; that they are very much of the same character as these others which are reckoned under the head of fixed charges.

Now, the showings by the different railroad companies amount to this: That in the years past, including the year 1906, there was not enough revenue from the business carried on within the state, including business that was entirely local to the state and the share of the interstate business which would properly be chargeable to or applied upon the property of the railroad companies within the state, to entirely pay the fixed charges outstanding and afford any adequate dividend or compensation to the owners of the stock itself—which represents the property—after paying all the operating expenses. And the showing was, in some cases, that there were no charges made, in the keeping of the accounts,
174 under the head of or for or on account of depreciation in the road or rolling stock—the property of the company. It is evident that there ought to be a proper account under that head; that a railroad, like everything else, will wear out in time; and they have been used so long in this country that there can be a reasonable estimate of the percentage of loss each year from depreciation of the roadbed, culverts, bridges, rolling stock; and that it would be proper to lay aside a reasonable amount to furnish replacements, renewals and repairs when needed, and that if that was not done the railroad company might soon be in a position in which it could not keep up, with the receipts that it was getting, and maintain its property in an efficient state to render such service as the public is entitled to receive from it. Now this is a matter in which the public has an interest, as well as the railroad companies and the stockholders of the railroad companies. Some of us older men can remember, in the early days, about the time when the state was admitted, the great anxiety that the people of the state had at that time that railroads should be brought into the state; that persons having capital should be induced to bring railroads into the state; that it was necessary for the prosperity and the upbuilding of the state that it should have railroad connections with the rest of the world; and that great and successful efforts were made to get large subsidies, in the way of land grants, from congress; and that almost every community in the state, every village that had hopes of getting a railroad to it, counties, and all the municipalities were ready to vote, and did vote, bonds as subsidies, for the purpose of inducing men with capital to come into the state and build railroads. They could foresee that it was necessary for
175 the advancement and prosperity of the state, to bring emigrants and others into the state, and change what at that time was a large waste into the sites of prosperous cities, thriving towns and villages and farms, and therefore to have railroads built giving them connection with the rest of the world; that there should

be a way to take farm products, grain, cattle, hogs, everything that was produced by the farmer, in the quickest manner to the best market, and to bring into the state commodities that were needed by its people. And that was done. Railroads were built. We have them. We see the effect of the railroads. And I think every one will admit that no institutions that we have had in the state have done so much to bring about the present state of prosperity, upbuild cities and cover the state with prosperous farms and with a large population, as the railroads. And it would certainly be a very great calamity if these railroads were dealt with in such a way as to destroy their efficiency and usefulness to the inhabitants of the state. But notwithstanding this, there is, of course, a danger that the mass of the people, looking upon these large aggregations of wealth, seeing occasionally a person who is reputed to be or who has become wealthy on account of his connection with these railroads, and that they are getting considerable amounts of money from the people of the state as compensation for the services that they are performing, will manifest a disposition to reduce this compensation; to save to the people a certain amount of what they have to pay when they patronize the railroads as passengers, or have commodities of any kind to ship upon the railroads. It is quite natural that they should want to have those charges reduced to the lowest point, at any rate, which would be consistent with keeping up the efficiency of the railroads and the advantages which they are receiving from them. There is a danger that this
176 feeling of selfishness may lead them too far, and reduce this compensation so much that it will not enable the railroads to serve them with efficiency—to keep up their roadbed, culverts, bridges and everything so that they will be entirely safe for the transportation of passengers and freight, and to keep the rolling stock in the best state of efficiency, and enable them to provide the best service attainable. And that is exactly what those corporations are required to do; they are required to exercise the highest degree of care in relation to the transportation of passengers, and a high degree of care in relation to the transportation of freight, and it is certainly for the interests of the people that they should be enabled to do this; and it would be a very short-sighted policy which would reduce the compensation of these railroads to a degree that would disable them from performing these services fully and fairly for the benefit of the people.

A question has been raised in the case that these rates fixed by the Railroad and Warehouse Commission and by the legislature trench upon the authority of congress under the commerce clause of the constitution, which gives to congress the entire control and regulation of commerce among the states and with foreign nations and the Indian tribes. There is no question made that this is an exclusive power and that no state has any right to trench upon it in the least, and the decisions of the supreme court have been quite frequently to the same effect. In the Eubank case, and in the case of the transportation from St. Louis to Texas (I do not remember the title), where the legislature provided that the shipper could

not recover any greater amount than was stated upon the bill of lading, and where, after the bill of lading had been issued, the Interstate Commerce Commission, or some persons acting
177 through its authority, raised the rate, and the railroad company collected the rate, which was above the amount named in the bill of lading, the supreme court held that an act of that kind by the legislature was matter affecting interstate commerce and not within the power of the legislature to enact. There were several of those decisions referred to on this hearing.

It is claimed on the part of the complainants that these regulations of rates in this state, passenger and freight, do interfere with interstate commerce, and instances have been cited as to their effect upon transportation between, we will say, the Twin Cities, and points on the border line of North Dakota; a comparison between the rates which the state has fixed, which would govern as between these cities and Moorhead, and rates which would govern transportation across the river to Fargo. And it has certainly been very persuasively argued that these rates, fixed by the Minnesota legislature in relation to transportation in Minnesota alone, do of themselves necessarily interfere with interstate commerce, and, under the provisions of the Hepburn law, prohibiting discrimination in respect to localities similarly situated, it is claimed that if the railroad companies themselves, without authority of the state, should fix the present rates between these cities and Moorhead and the interstate rates now existing between these cities and Fargo (and the same with Grand Forks and other places) that they would be liable to prosecution for discrimination. And it would seem to be very difficult to avoid that conclusion, and the conclusion that these rates fixed in respect to Minnesota do necessarily and directly affect interstate commerce. But on the other hand, we have decisions of the Supreme Court, going back at least as far as the case of Munn vs. Illinois in the 94th U. S., and the Granger cases in the same
178 volume, and repeated by very many decisions since and up to the present time (the last one being what may perhaps be termed the dictum of Mr. Justice White in the case which was decided only on the 19th of April last), to the effect that the state has the right to fix rates in respect to local business within the state; that each state has that right. That has been, as I say, decided over and over again by the supreme court. And as it is a fact that if these rates fixed by the Minnesota legislature do interfere with interstate commerce, it is not simply the rates between here and Moorhead which interfere with it, but it would be as well the rates fixed to any point near the borders of the state; the rates in the state to Willmar, or Detroit, or Crookston, would, in the same way, to a lesser degree, interfere with the interstate rates that existed prior to that time between these cities and points in North Dakota. A holding that they did so interfere and for that reason are unconstitutional, if held at all, would apply, it would seem to me, to these rates entirely throughout the state. The state is bordered on all sides by other states, and I do not think it can be held that the rates simply to Moorhead might

be unconstitutional and the rest of them constitutional. But in view of the decisions of the supreme court, to which I have referred, and which have been so continually adhered to down to the present time, it seems to me it would be very improper that I should attempt, on this preliminary hearing in this case, to make a holding entirely contrary to those holdings of the supreme court. I should hesitate very much before doing so. Although I do not think I ordinarily hesitate in any case to rule as I deem to be correct according to law, I certainly do pause before holding that these rates are not within the power of the legislature, if they are fairly compensatory.

179 I have no doubt that congress might very properly, under the constitutional provision giving it the entire power of control over interstate commerce, assume control of the avenues of interstate commerce—of the railroads which are engaged in interstate commerce, and of all rates which are collected by those railroads, whether within the states or without the states; because the matter of those rates would affect these avenues of interstate commerce, might affect their ability to continue as avenues of interstate commerce. The rates if they were fixed by the states might be fixed so low in one state, and another, and all of them, that the railroads could not exist and could not perform their functions as carriers of interstate commerce; and for the purpose of securing these railroads as carriers of interstate commerce, congress would have the power under that provision, to take the entire control of the regulation and the rates which the carriers of interstate commerce, upon the avenues of interstate commerce, would have the right to charge, the same as congress has assumed the right, under the very same clause, to control the navigation of the coastwise waters, bays and lakes, and the rivers running through the country—even if the rivers are entirely within a particular state. They have as much control of the Mississippi River above the Falls of St. Anthony as they have between St. Louis and New Orleans; the same control of the Minnesota River, which is entirely within the state—both of which streams have been used for the purpose of navigation within my recollection. On the upper Mississippi, above the falls, there were two lines of steamboats, before the war, for some years; and upon the Minnesota River there were several lines of steamboats, running as far as Fort Ridgeley, I think; and after congress assumed the control of navigation

180 entirely, it applied this control to those rivers just as much as to rivers that run between states and through several states, and applied it to the bays and inlets on the coasts of the ocean, where there was navigation running from one state to another. The same with the coasts upon the Great Lakes. I think there is no doubt but that matter would be within the control of congress. But, as has been held by the supreme court in many cases, where congress has the power to exercise control, as long as it fails to exercise it the states may exercise control in all matters that are proper—police regulations at any rate. And until congress does exercise that control, and certainly while the supreme court continues to hold, as it has, that the states may regulate the local commerce that is entirely

within the state, I do not think it would be proper that I should attempt to hold that these acts are void as invasions of the right of congress to control exclusively the avenues of interstate commerce, although I must confess that the arguments to the effect that these particular acts of the Minnesota legislature do interfere, necessarily and directly, with interstate commerce, are extremely cogent.

Now, with respect to the order of the Railroad and Warehouse Commission which went into effect on the 15th of November last, and which was accepted by the railroad companies, and which they acted under from that time to the commencement of this action, and in respect to the passenger rates, which were fixed by the act of April 4th of the present year, and were accepted by the railroad companies, it is claimed that no preliminary injunction should issue having the effect to stop the operation of that order and that act, and that the office of a preliminary injunction is simply to keep matters in statu quo until the final decision of the case. That is, ordi-
181 narily, the effect of a preliminary injunction, and ordinarily it ought not to be extended beyond that. It is true that there may be cases—for instance, where a trustee of property is attempting to put that property in the hands of a third person and to defraud the cestui que trust of the property or of its use or benefit, and where that is made clear, and where it has not gone fully into effect but has partly gone into effect and that is made clear, a preliminary injunction may be made so far mandatory as to require,—where the property has been partly taken away from the hands of a trustee, perhaps by his own fraudulent consent, and the cestui que trust is likely to be deprived of it—that even a preliminary injunction may be made mandatory so far as to require that that property be restored to the hands of the trustee or into such hands as the court may place it, to preserve it for the benefit of the cestui que trust. But that exercise of authority ought not to extend beyond cases where there is actual fraud; where the person receiving the property has no fair claim of right, no fair color of right to the property. If he can show that he has a fair color of right which may be litigated, he ought not to be deprived of an opportunity to preserve the status quo until the matter should be properly determined. Now, in this case, in respect to the rates fixed by the Railroad and Warehouse Commission, it is claimed on behalf of the state—and claimed, no doubt, honestly—that these rates are not confiscatory; that they do afford an adequate compensation for the services rendered, in view of the property which is used in the business, and that they are entirely valid; and the same way with the passenger rates. The state insists—and no doubt entirely in good faith—that these rates are compensatory; that these acts are not confiscatory; that they are not in violation of
182 the constitutional provision in any manner. And it seems to me, under those circumstances, that the preliminary injunction cannot go against the enforcement of the rates fixed by the Commission, nor the passenger rates which have been accepted by the railroads and are in operation. I say this without any reference to the fact that the court would have no right to fix rates if it should be determined to enjoin either of these rates. And this

will obviate the necessity, upon this hearing, of determining whether the rates fixed by the Commission, or the passenger rates, together or singly are confiscatory, and not afford reasonable compensation for the services rendered and a proper allowance with respect to the property employed. These, I think, need not be considered.

But the act of April 18th, fixing the commodity rates, has not yet gone into effect. It has been restrained by the preliminary order of this court. And if it appears on this hearing that the rates fixed by that commodity act, in view of the lessening of the rates by the Railroad and Warehouse Commission and the lessening of the rates by the act of April 4th, are not sufficient to be compensatory, and are in fact confiscatory, the preliminary injunction ought to go against the putting of those rates into effect. As has been said, the showing in the case is that under the rates that were in effect prior to any of these mentioned going into effect, the amount of compensation received by the railroad companies for the services done within this state, in respect to transportation within the state, of property and persons, was not compensatory; that in the case of the stronger roads, although it came very nearly being compensatory, in relation to the others they were far from compensatory. And it was virtually admitted that the

183 effect of the order made by the Railroad and Warehouse Commission was to reduce the amount of compensation which the railroad companies would receive the articles that were covered by that order, on merchandise within the state of Minnesota, some 20% to 25% (I think that appeared in the report made by the Railroad and Warehouse Commission to the legislature) and that the effect of the act of April 4th, with respect to passenger rates, cutting the rate from three cents to two cents per mile (which, upon the face of it, would be a cut of 33⅓%) was in fact, in view of all conditions, actually a cut of about 22% or 23% of the amount which was paid before for like services. It seems to me, upon this evidence of the conditions before either of those new rates were put into effect, and the reductions made by those rates, that if there is added the reduction which is attempted to be made by the commodity act, it will reduce the compensation received by the companies below what would be a fair compensation for the services performed, including an adequate return upon the property invested. And I think, on the whole, that a preliminary injunction should issue, in respect to the rates fixed by Chapter 232, talked of as the commodity rates, and that there should be no preliminary injunction as to the other rates, although the matter as to whether they are compensatory or not is a matter which may be determined in the final determination of the action.

An order will be entered overruling the demurrers in each case.

Endorsed: "Filed Sept. 23, 1907. Henry D. Lang, Clerk."

184 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named Edward T. Young, as Attorney Gen-

eral for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him and by exhibiting to him the Court Seal & Clerk's Signature on the original writ, personally, at the City of Saint Paul in said District on the 24th day of September, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named Great Northern Railway Company, by handing to and leaving a true and correct copy thereof with Louis W. Hill, the President of said Company, and also by exhibiting the Clerk's seal & Signature on Original, personally, at St. Paul in said District on the 26th day of September, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named W. W. Broughton, General Traffic Manager, Great Northern Ry. Co., by handing to and leaving a true and correct copy thereof with him & exhibiting the Clerk's Seal & Signature on the original, personally, at St. Paul in said District on the 24th day of September, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

185 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on James Manahan, Geo. S. Loftus, J. C. Applegate, John H. Grass, B. E. Sundberg, and Julius J. Ritter, members of the Shippers Association, by handing to and leaving a true and correct copy thereof with each of them and exhibiting the Clerk's Seal and Signature on the original, personally, at St. Paul in said District on the 25th day of September, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

The President of the United States of America to Great Northern Railway Company, its officers, directors, agents, servants, and employés, and each of them; Edward T. Young, as Attorney General of said State of Minnesota, and Walter Scott, H. P. Webb, John Polm, L. Larson, Tom Gunness, and S. S. Glarum, and all other persons, and each of them, from and after the time that they shall have knowledge of the Order for a temporary injunction therein, Greeting:

186 Whereas, in the above entitled cause depending in the Circuit Court of the United States for the District of Minnesota, Third Division, in Equity, an Order was made and entered by said Court under date September 23, 1907, directing that a writ of injunction issue restraining and enjoining, pending the final hearing of this cause, and until the further order of the court in the premises, the defendants above named, and each of them, and all other persons and each of them from and after the time that they shall have knowledge of such Order, from doing certain acts in said Order set forth, and hereinafter more particularly mentioned.

Now therefore, know ye that the said Great Northern Railway Company, its officers, directors, agents, servants and employés, and each of them, are enjoined and restrained, pending the final hearing of this cause, and until the further order of the Court in the premises, from publishing, adopting or putting into effect the tariffs, rates or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That you, Edward T. Young, as Attorney General of said State of Minnesota, are, pending the final hearing of this cause, and until the further order of the Court in the premises, restrained and enjoined from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act, or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof.

That you, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and each of you, and all other persons, and each of them, from and after the time that they shall
187 have knowledge of said Order, are restrained and enjoined, pending the final hearing of this cause, and until the further

order of the Court in the premises, from taking or instituting or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them.

Witness: The Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of September, 1907.

Issued at my office in the City of St. Paul, under the seal of said Circuit Court the day and year last aforesaid.

[SEAL.] HENRY D. LANG, *Clerk.*

Endorsement: Writ of Injunction. Filed October 7th, 1907. Henry D. Lang, Clerk, by Louise D. Trott, Deputy.

188 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Separate Answer of E. T. Young.

The separate answer of the defendant Edward T. Young to the bill of the complainants above named, respectfully shows:

The defendant now and at all times hereafter, saving and reserving unto himself, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer hereunto, or unto so much and such parts
189 thereof as this defendant is advised is or are material or necessary for him to make answer unto, says:

I.

This answering defendant admits the residence and citizenship of the complainants is as alleged in the complaint. That the defendant, the Great Northern Railway Company is a corporation organized under the laws of the State of Minnesota. That this defendant, Edward T. Young, is a citizen of the State of Minnesota and is the Attorney General of said State. That the defendants Ira B. Mills, Charles F. Staples and William E. Young, are the

members of and constitute the Railroad & Warehouse Commission of the State of Minnesota and are residents of said State, and that the defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, are residents of the State of Minnesota.

Admits that the defendant Railway Company is operating lines of railway as a common carrier of passengers and freight in and through the States mentioned in the bill of complaint herein.

II.

This defendant admits that the lines of railway operated by the defendant Railway Company are operated as one entire system and upon information and belief admits that the stock of said company outstanding represents said whole system; admits that a large part of the business of said defendant Railway Company is the transportation of interstate commerce, but this defendant denies that there is any necessary confusion or intermingling of the business transacted by said Railway Company, which is wholly local to each of the States in which it operates, with that which is interstate commerce, and alleges that the amount and character of each and the cost and productiveness of each, are entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice among railroads for many years past.

190

III.

This defendant believes that the greater portion of defendant Railway Company's lines have been judiciously located, but defendant has been informed and believes that certain of said lines have not been, and therefore he denies, and believes the denial to be true, that all of said defendant's said lines have been judiciously located, and as to what portions and how much of said defendant's said lines have been judiciously located this defendant requires proof, if the same be necessary.

IV.

This defendant admits that the defendant Great Northern Railway Company owns practically the entire capital stock of the St. Paul, Minneapolis & Manitoba Railway Company, the Eastern Railway Company of Minnesota and the Willmar & Sioux Falls Railway Company, but as to whether said defendant Railway Company owns any of the capital stock of the Duluth, Benson & Watertown Railway Company, this answering defendant has no knowledge or information sufficient to form a belief, and therefore prays that complainants be required to make proof thereof. And as to whether the said defendant Railway Company has guaranteed the bonds of said subsidiary railway companies in the sum of $83,119,939, or any other sum or sums, or in any amount, this answering defendant has no knowledge or information sufficient to form a belief, and he therefore prays that the complainants be required to make proof thereof. Defendant further alleges that he has no knowledge or information sufficient to form a belief as to whether the outstanding

capital stock of the Great Northern Railway Company amounts to the sum of $149,577,500, or to what sum or amount the outstanding capital stock of defendant Railway Company amounts to, and he prays that complainants be required to make proof thereof.

191 He is informed and believes it to be true, that the par value of the stock and bonds outstanding on account of said defendant Railway Company's said lines is greatly in excess of the actual original cost of constructing and equipping the same, and much greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same, and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of Minnesota is much less than the cost per mile as to the part of said lines which are without the State of Minnesota. That this defendant is unable to state the exact value of the said Company's property, either as to its whole line or as to that portion within the State of Minnesota, and asks that the complainants be required to present proof thereof.

V.

Further answering this defendant avers that prior to the 6th day of September, 1906, the defendants Ira B. Mills, Charles F. Staples and William E. Young, in their official capacity as the Railroad & Warehouse Commission, made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Great Northern Railway Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota of the merchandise of the kind, quality and class described in Exhibit C attached to the complainants' bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the course of said investigation, due notice of the same having been given to the railway companies interested. That the defendant the Great Northern Railway Company duly appeared, answered and took part in said proceeding, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter of said in-

192 vestigation and of said defendant Great Northern Railway Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates for the transportation between stations in the State of Minnesota by common carriers of merchandise of the kind and class described in Exhibit C; and said defendants as members of and constituting said Commission, duly heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant Great Northern Railway Company, and as a result of said investigation and their consideration of the evidence adduced therein, said defendants constituting the Railroad & Warehouse Commission as aforesaid, on the 6th day of September, 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the schedule of rates in said bill of complaint referred to and complained of and set forth in and by said Exhibit

C, which said Exhibit C is hereby admitted to be a true and correct copy of the Order made on said day and schedule referred to in said Order of September 6th, 1906.

VI.

That said defendants acting as such Commission, in pursuance of their official duties in the premises, made said Order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and this defendant now believes and alleges, that the rates theretofore charged by said defendant Railway Company for the transportation of said commodities between stations in Minnesota, were on said September 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonably large sum for the service rendered and yielding to said
193 Railway Company an unreasonably high return, in that said rates, together with said defendant Company's other receipts from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VII.

That said defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced to make the said Order by reason of the fact that after considering the evidence adduced at the said hearings, and other competent and sufficient information, they were informed and convinced, and this defendant alleges, believing it to be true, that the rates so fixed by them in their said Order of September 6th, 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then and are now, in every respect, equal, just and reasonable as to the said defendant Railway Company and the complainants herein as stockholders of said defendant Railway Company and of the other stockholders of said Company; and defendant now avers that the said rates yield to said defendant Railway Company a fair return upon the present value of its property, including both its line and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascertained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvement thereon, the amount and market value of said company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said Company, together with all other ele-
194 ments affecting the value of said property, which are proper to be considered.

VIII.

Further answering this defendant respectfully avers and submits that the said Orders of Sept. 6th, 1906, and May 3rd, 1907, and the

said Act of April 18th, 1907, relate to and affect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to, nor do they in any manner, affect or burden interstate commerce, and this defendant denies that the existence or maintenance of the rates provided in said Orders and Act can in any manner affect, change or lower any other rate or rates maintained by said defendant Railway Company which are just and reasonable, nor can the same constitute discrimination as to any other rate, if such other rate is just and reasonable in itself, nor effect, nor constitute discrimination as to an interstate rate maintained by the defendant Railway Company, whether reasonable or otherwise.

IX.

This defendant admits that if the said Orders of September 6th, 1906, and May 3rd, 1907, permit rates, or if either of the Acts of the Legislature set forth and complained of in said bill of complaint did not in and of itself permit rates which would yield to defendant Great Northern Railway Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing said Orders and Laws and thereby compelling the defendant Railway Company to accept sufficient compensation for the service rendered, would be as complainants allege, if a compliance with said Orders and laws were to be enforced upon said Company, a confiscation of its property, a taking thereof without due
195 process of law, and a denial as to said company and its stockholders of the equal protection of the law, and violative of the Constitution of the United States and especially the Fourteenth Amendment thereof. Further answering this defendant alleges in truth and in fact, the rates provided for in and by said Order of September 6th, 1906, are equal and just, and are more than adequate for the service performed; and that, after ample and full consideration of said rates by the defendant Railway Company, its officers, agents and directors, and as this defendant believes, by the complainants, the said rates were duly accepted, adopted and promulgated by said defendant Railway Company and went into full force and effect on or about the 15th day of November, 1906, and have ever since been maintained and used by said Company as its regular and duly published rates for the transportation of the merchandise described in Exhibit C, between stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railway Company, these complainants, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant Railway Company, or the com-

plainants, or any other persons, since the same went into effect on November 15th, 1906.

XI.

This defendant admits that on the 3rd day of May, 1907, the Railroad & Warehouse Commission duly made the Order referred to and described in said bill of complaint and attached thereto as Exhibit D thereof.

196 That as it appears from said Order (Exhibit D) the same is an extension of the terminal rates provided for in the Order of September 6th (Exhibit C) to certain stations in the State of Minnesota; that the same considerations and conditions which entered into and controlled the validity of said Order of Sept. 6th, 1906, enter into and control said Order of May 3rd (Exhibit D), except that the effect of said Order upon the revenues of said defendant Railway Company is comparatively much less than is the said Order of Sept. 6th, 1906. All of the allegations hereinbefore contained with reference to the Order of September 6th (Exhibit C) are applicable to and are hereby repeated as to said Order of May 3rd, (Exhibit D).

XII.

This defendant further avers that as provided by the statutes of the State of Minnesota, the defendant Railway Company had the right to appeal to the District Court of the State of Minnesota from the Orders of the Commission so entered on Sept. 6th, 1906, and on May 3rd, 1907, within thirty days after the making thereof; that said District Court is a court of record and general jurisdiction, duly organized and existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; and said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates theretofore maintained by said defendant Company, as well as those fixed by the Orders of the Commission in said Orders of Sept. 6th, 1906, and May 3rd, 1907, would have been for trial before said Court de novo and upon such trial the order and findings of said Commission would have been only prima facie correct; that in said pro-

197 ceeding and upon said appeal all of the rights of said complainants would have been protected and every objection to the Orders of said Commission and every consideration which might be urged in opposition thereto, which may, can or might be urged in this action, could and would have been considered by said District Court on said appeal. That as this defendant is informed and believes, no demand was ever made by said complainants, or either of them, upon said defendant Railway Company, its officers, agents or directors to appeal from the Orders of said Commission made and entered September 6th, 1906, and May 3rd, 1907, or to take any step in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

XIII.

This answering defendant alleges that if the defendant Railway Company had not itself adopted and published the Orders of said Commission hereinbefore referred to, nor filed with said Commission its schedule of the rates and charges required by said Orders of said Commission, the defendants Ira B. Mills, Charles F. Staples and William E. Young, as said Commission, would have proceeded, upon the expiration of said time for appeal, to enforce said Orders as provided by the statutes of the State of Minnesota, by proceeding in mandamus in the said District Court, and in that behalf would have requested the assistance of the Attorney General. That as this defendant is advised, the proceeding above described is the only proceeding which this defendant could take for the purpose of enforcing the Orders of this Commission, hereinbefore referred to, and that until the rendition of final judgment in said proceedings by mandamus, the defendant Railway Company, its officers, servants and agents, are subject to no fine or penalty through, by or on account of said Orders whatever; nor is said Company in any
198 manner subject to harassing litigation of any kind or to a multiplicity of suits by reason thereof.

XIV.

That in the proceeding by mandamus hereinbefore described, the Orders of the Commission would be only prima facie correct, and the defendant Railway Company would have full and adequate means and opportunity to defend against the same and to urge in such defense every consideration of law and equity, and every fact which the complainants might or could present to this Honorable Court on the trial of this action upon its merits; That defendant is, as he is advised, confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railway Company to comply with said Orders is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins this defendant as prayed in the bill of complaint herein, that the complainants or said defendant Railway Company will be compelled to defend their rights in a multitude of actions and proceedings, or that they or it will be in any manner deprived of any defense or even hampered in maintaining each and every defense which it may have to the Orders of the Commission entered Sept. 6th, 1906, and May 3rd, 1907, hereinbefore specified.

XV.

Further answering this defendant admits that on or about the 4th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act prescribing the maximum rate to be charged for the transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof;" and that

a copy of said Act is attached to said bill of complaint marked
199 Exhibit A; and this defendant further admits that on or about the 18th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad & Warehouse Commission," a copy of which is attached to said bill of complaint marked Exhibit B.

XVI.

This defendant alleges, that under and pursuant to the Constitution and laws of the State of Minnesota, the Attorney General of said State has the right, in the exercise of his official discretion, to institute and prosecute in the District Court of said State, in case the said defendant Railway Company refuses or neglects to comply with the provisions of said Acts of the Legislature, or either of them, and to put into force and effect the schedule of rates and charges provided for in said Acts, mandamus proceedings in the name of the State of Minnesota and on the relation of this defendant as Attorney General and not otherwise, to compel the said defendant Railway Company to obey said laws and to put into force and effect the schedule of rates and charges therein prescribed. That in said mandamus proceedings the schedule of rates prescribed in said acts respectively would be deemed and considered only prima facie reasonable and proper charges, and the defendant Railway Company would have full and adequate means and opportunity in such mandamus proceedings to defend against the enforcement of the rates and charges prescribed in and by said acts respectively, and to urge in said defense every consideration of law and equity, and every fact which the complainants might or could present to this Honorable Court on the trial of this action upon its merits. That this defendant is, as he is advised, confined to said proceedings by the statute of the State of
Minnesota, and that it is not true that unless this Court en-
200 tertains this action and enjoins the defendants, as prayed in the bill of complaint herein, that said Railway Company will be compelled to defend its rights in a multitude of actions and proceedings, or that it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the enforcement of the said acts of the Legislature hereinbefore referred to.

This answering defendant denies that he has ever contemplated or intended or threatened to bring any action or prosecution or take any steps whatever, looking to the enforcement of the provisions of said Acts of the Legislature, other than said proceeding by mandamus. Defendant further alleges that no application has ever been made to the defendants Ira B. Mills, Charles F. Staples and William E. Young, acting as the Railroad & Warehouse Commissioners, or either of them, by the complainants herein or by the defendants Railway Company, its officers or agents, requesting the exercize by them of their right to modify or change any of the rates or charges provided for by said Acts of the Legislature.

XVII.

Further answering this defendant avers that for many years last past the rates charged by the defendant Railway Company for the transportation of passengers within the State of Minnesota, have been unequal, unjust and exorbitant, and that the rates and charges fixed and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railway Company and its stockholders, an ample revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges
201 of said defendant Company properly chargeable to the said passenger service, and such proper proportion of all of the other legitimate and proper expenses of said defendant Railway Company chargeable thereto, and to yield to said Company and its stockholders a fair and adequate return upon the value of the property invested in said business. This defendant respectfully avers that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not purport to nor does it in any manner affect or burden interstate commerce, and this defendant denies that the existence or maintenance of the rates provided in said act can in any manner, affect, change or lower any other rate or rates maintained by said defendant Railway Company, which is or are just and reasonable, nor can the same constitute discrimination as to any other rate or rates if such other rate or rates is or are just and reasonable, in itself, nor affect, nor constitute discrimination as to any interstate rate maintained by the defendant Railway Company whether the latter is reasonable or otherwise.

XVIII.

That prior to the 18th day of April, 1907, the rates and charges made by the defendant Railway Company for the transportation between stations within the State of Minnesota of the commodities named in said Act, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railway Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; that the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railway Company and its stockholders, and in truth and in fact are proportionately still higher than the rates and charges fixed by said Railway Company for like services in the transporta-
202 tion of other freight in the State of Minnesota and elsewhere, and that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railway Company and its stockholders, a revenue proportionately sufficient with its other revenues, to permit it to meet its operating expenses, fixed charges and all other proper and necessary expenses in connection with the operation of said Railway Company, and in addition

thereto, a fair and adequate return upon the value of the property invested in the business of said Railway Company.

XIX.

Further answering this defendant avers upon information and belief, that no sufficient demand was ever made by the complainants upon the defendant Railway Company, its officers or directors, requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either of the Orders of the Railroad & Warehouse Commission or the Acts of the Legislature mentioned in said bill of complaint, and avers upon information and belief, that this suit is wholly collusive and is brought not for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Orders and Laws, but for the purpose of hindering, delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XX.

Defendant on his information and belief denies that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of railway run. Defendant further
203 denies that the rates for intra-state business per mile of haul should be in all cases greater than the rates per mile upon interstate business, and allege that if such comparison is to be made in any case resort must be had to all the facts and circumstances surrounding the traffic in question. Defendant admits that the defendant Railway Company's operating and other expenses have increased to some extent, as alleged in the bill of complaint, but on information and belief denies that the said expenses have increased to the extent therein alleged, and in this behalf defendant avers that said Company's operating expenses, both as to traffic local to the State of Minnesota, and its interstate traffic, and traffic in other states, for many years have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Company for purposes not authorized by law or the charter of defendant Railway Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to this defendant.

XXI.

Further answering this defendant avers that the defendant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Orders of said Commission of September 6th, 1906, and May 3rd, 1907, and the Act of the Legislature of April 18th, 1907, will be necessarily greatly increased in

the near future; that said freight commodities are of a class and character which enables them to be transported at a very slight cost, as compared with other classes of freight, but notwithstanding that, this defendant charges the fact to be that under the tariffs and charges heretofore maintained by the defendant Company,
204 the freights named in said Orders and said Act of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said Company from the operation of its lines of road local to the State of Minnesota.

XXIII.

Further answering this defendant denies that the jurisdiction of this Court ought to have been, or can be invoked, in this cause, and he further denies that said complainants are entitled to the relief, or any part thereof, that their said bill of complaint demandeth. This answering defendant further alleges that the complainants in and by their bill herein seek to restrain and enjoin the performance by this defendant, as Attorney General of the State of Minnesota, of his discretionary official duties and powers, and that the above entitled cause is in truth and in fact a suit against the State of Minnesota, instituted and maintained contrary to the provisions of the Constitution of the United States of America, especially the Eleventh Amendment thereto, and this defendant for such reasons doth now and always protest against the exercise by this Honorable Court of any jurisdiction over this defendant by reason of the facts and matters set forth and alleged in the said bill of complaint.

This defendant prays the same advantage of the aforesaid answer as if he had pleaded or demurred to the said bill of complaint, not admitting, however, that there is any matter or thing in said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein or hereby well and satisfactorily answered, confessed, traversed and avoided or denied, true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain
205 and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG,
Defendant.

THOMAS D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for Defendant.

Endorsement: Separate Answer of E. T. Young. Filed November 4th, 1907. Henry D. Lang, Clerk.

206 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

These repliants, John S. Kennedy and Henry F. Dimock, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant above named, Edward T. Young, for replication thereunto say that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in law, to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

DE FOREST BROTHERS,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Endorsement: Replication to Answer of Edward T. Young. Filed December 2, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

207 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

These repliants, John S. Kennedy and Henry F. Dimock, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants above named, Ira B. Mills, Charles F. Staples and William E. Young, for replication thereunto say that they do and will aver, maintain and

prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law, to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOW, BUTLER & MITCHELL,
DE FOREST BROTHERS,
ROBERT THORNE,
Solicitors for Complainants.

Endorsement: Replication to Answer of Commissioners. Filed November 4th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

208 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Take notice that the annexed motion for the appointment of a Special Master, and the order of the Court limiting the time for the taking of testimony herein, will be brought on for hearing before Honorable Walter H. Sanborn, Judge of said Court, at his chambers in the Federal Building, in the City of St. Paul, Minnesota, on Monday the 20th day of April, 1908, at eleven (11) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

To Edward T. Young, Esq., Solicitor pro se.
William R. Begg, Esq., Solicitor for Defendant Great Northern Railway Company.
Messrs. O'Brien, Stone and George T. Simpson, Solicitors for Defendants Edward T. Young Ira B. Mills, Charles F. Staples, and William E. Young.
E. P. Peterson, Esq., Solicitor for Defendants John Palm and L. Larson.

209 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Now come the above named complainants and move the Court that it appoint a Special Master in this case to take the testimony and to make and report to the Court his findings of fact on the issues raised by the pleadings herein, and to have such other powers and perform such other duties in the premises as the Court shall be advised; and at the same time that the Court will limit the time for the taking of testimony herein.

Dated St. Paul, Minnesota, April 20, 1908.

HOW. BUTLER & MITCHELL,
Solicitors for Complainants.

Endorsement: Notice and Motion for Appointment of Special Master, etc. Filed May 4th, 1908. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

210 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

This cause came on for hearing, on April 20, 1908, upon the motion of complainants that a Special Master be appointed and that a time for taking testimony herein be fixed. Mr. Jared How appeared for the complainants, Honorable Edward T. Young appeared for himself and Mr. Thomas D. O'Brien, Mr. Stiles W. Burr and Mr. William A. Lancaster for other parties interested herein, and after argument and consideration,

It is hereby ordered that Honorable Charles E. Otis of St. Paul, Minnesota, be, and he is hereby, appointed Special Master in Chancery in this case.

The Special Master hereby appointed is empowered and directed to take and report to the court the evidence in this cause.

The Special Master hereby appointed is empowered and directed to examine the evidence, to make the necessary computations, and to find and state the facts in this case, and to make a report to this court of the facts so found and of the results of such computations, and to recommend to the court in his report a form of a proper decree herein.

It is further ordered that upon the completion of his report of his findings of fact, the Special Master shall notify counsel
211 for the respective parties thereof and shall exhibit said report to them, or shall deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the Master within thirty (30) days after notice of its completion, and the Master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon and any modifications of or additions to his report he may deem it just and proper to make in view of such exceptions.

Upon the filing of such report and exceptions the cause shall stand for hearing before the court upon the said exceptions as though they had been made at the time specified in Rule #83 in Equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence in support of their bill is fixed at and limited to ninety (90) days from the date hereof, that the time within which the defendants shall take their evidence in defense herein is fixed at and limited to sixty (60) days thereafter, that the time within which the complainants shall take their evidence in rebuttal is fixed at and limited to thirty (30) days thereafter.

And it is further ordered that George N. Hillman be, and he is hereby appointed the stenographer and authorized to take and transcribe, under the direction of the Special Master, the testimony in this case.

WALTER H. SANBORN,
Circuit Judge.

St. Paul, Minnesota, May 4, A. D. 1908.

Endorsement: Order appointing Master and Stenographer, and limiting the time for taking of testimony. Filed May 4th, 1908. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

212 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

I, Chas. E. Otis, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially and to the best of my ability, perform my duties as Special Master in Chancery in the above entitled cause, So Help Me God.

CHAS. E. OTIS.

Subscribed and sworn to before me this 12th day of May, A. D. 1908.

[SEAL.] HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

Endorsement: Oath of Special Master. Filed May 12th, 1908. Henry D. Lang, Clerk.

213 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

(Consolidated.)

The term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, having expired, and George T. Simpson having been duly elected as such Attorney General of the State of Minnesota, and having qualified and being now acting as such; and

The term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota, having expired, and Charles E. Elmquist

having been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and having qualified and being now acting as such;

It is stipulated that said George T. Simpson and Charles E. Elmquist may be substituted as parties defendant in this suit in
214 place and stead of said Edward T. Young and William E. Young, respectively.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

——— ———,
Solicitors for Defendant Railway Company.
E. T. YOUNG,
GEORGE T. SIMPSON,
O'BRIEN & STONE,
Solicitors for Defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.
——— ———, *Solicitor for John Palm.*
——— ———, *Solicitor for L. Larson.*

Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

(Consolidated.)

215 It appearing to the Court from the stipulation of the parties that,

The term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, has expired, and George T. Simpson has been duly elected as such Attorney General of the State of Minnesota, and has qualified and is now acting as such; and

The term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota has expired, and Charles E. Elmquist has been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and has qualified and is now acting as such;

It is ordered that the said George T. Simpson be and he is hereby substituted as party defendant in this suit in place and stead of Edward T. Young, and that Charles E. Elmquist be substituted as party defendant in this suit in place and stead of William E. Young, and that all orders and proceedings made, entered or had in this suit shall apply to and bind said substituted defendants and each of them in the same manner and with the same force and effect as if said substituted defendants and each of them had been parties defendant in this suit from the time of the institution thereof.

Dated St. Paul, Minn., November 24, 1909.

WALTER H. SANBORN, *Judge.*

Endorsement: Stipulation & Order Substituting Parties Defendant. Filed January 5th, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

216 Circuit Court of the United States for the District of Minnesota, Third Division.

In Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

I hereby withdraw my appearance as solicitor for defendant the Great Northern Railway Company, in the above entitled suit, and consent to the substitution of J. D. Armstrong, Esq., as solicitor for said defendant in my place and stead.

Dated January 27, 1910.

WM. R. BEGG.

The Clerk will enter my appearance for the defendant, the Great Northern Railway Company, in the above entitled suit in the place and stead of Wm. R. Begg.

J. D. ARMSTRONG,
Solicitor for Defendant,
Great Northern Railway Company.

Great Northern Railway Bldg., St. Paul, Minnesota.

217 Service of a copy of the above notices withdrawing the appearance heretofore entered by Wm. R. Begg, Esq., as solicitor for the defendant, the Great Northern Railway Company, and substituting J. D. Armstrong, Esq., as solicitor in his place and stead, is hereby admitted this 31st day of January, 1910.

HALE HOLDEN,
DE FOREST BROS.,
HOW, BUTLER & MITCHELL,
Solicitors for Complainant, St. Paul, Minnesota.

Endorsement: Stipulation for Withdrawal of Wm. R. Begg, and Appearance of Jas. D. Armstrong, as Solicitor for G. N. Ry. Co. Filed Feb. 5, 1910. Henry D. Lang, Clerk.

218 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes December Term, A. D. 1909.

FEBRUARY 5TH, 1910.

Saturday morning.—Court opened pursuant to adjournment. Present: Charles A. Willard, Judge; Henry D. Lang, Clerk.

* * * * * * *

Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

I hereby withdraw my appearance as solicitor for defendant, the Great Northern Railway Company, in the above entitled suit, and consent to the substitution of J. D. Armstrong, Esq., as solicitor, for said defendant in my place and stead.

Dated January 27, 1910.

WM. R. BEGG.

The Clerk will enter my appearance for the defendant, the Great Northern Railway Company, in the above entitled suit, in the place and stead of Wm. R. Begg.

J. D. ARMSTRONG,
Solicitor for Defendant Great Northern Railway Company.

Service of a copy of the above notices withdrawing the appearance heretofore entered by Wm. R. Begg, Esq., as solicitor for the defendant, The Great Northern Railway Company, and substituting J. D. Armstrong, Esq., as solicitor in his place and stead, is hereby admitted this 31st day of January 1910.

HOW, BUTLER & MITCHELL,
HALE HOLDEN,
DE FOREST BROS.,
Solicitors for Complainant.

In accordance with the foregoing withdrawal of Mr. Wm. R. Begg solicitor of record for the defendant Great Northern Railway Company, as its solicitor in this cause, his consent to the substitution of J. D. Armstrong in his place and stead and the appearance of the

said J. D. Armstrong, it is by the Court Ordered that the appearance of the said J. D. Armstrong be and the same hereby is entered as solicitor for the defendant Great Northern Railway Company in the place and stead of Wm. R. Begg.

* * * * * * *

A true record.
Attest:
HENRY D. LANG, *Clerk*.

219 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY & HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY Co. et al.

Appearance.

The Clerk will enter my appearance for the defendants George T. Simpson and Charles E. Elmquist, substituted as defendants in the above suit in place of Edward T. Young and William E. Young.

GEORGE T. SIMPSON.
EDWARD T. YOUNG.
C. LOUIS WEEKS.

Endorsement: Appearance of Geo. T. Simpson, et al., as Solicitors for Certain Defendants. Filed Feb. 15, 1910. Henry D. Lang, Clerk.

220 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

FEB'Y 15TH, 1910.

This day come the defendants George T. Simpson and Charles E. Elmquist, substituted as defendants in place of Edward T. Young and William E. Young by George T. Simpson, Edward T. Young and C. Louis Weeks, solicitors, on whose motion it is hereby ordered that the appearance of said substituted defendants be and the same is hereby entered.

C. R. "C" page 147.

221 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

It is stipulated that the above named complainant John S. Kennedy, having heretofore died, and Letters Testamentary on the estate of said John S. Kennedy having heretofore under date of the 22nd day of December, 1909, been issued out of the Surrogates' Court of the County of New York, State of New York, to Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, said Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, as executrix and executors respectively of the Will of John S. Kennedy, shall and may be substituted as parties complainant in this suit in place and stead of said John S. Kennedy.

GEORGE T. SIMPSON,
Att'y Gen.,

E. T. YOUNG,
Solicitors for Defendants George T. Simpson, Ira B. Mills, Charles F. Staples, and Charles E. Elmquist.

F. H. PETERSON,
Solicitor for Defendant John Palm.

F. H. PETERSON,
Solicitor for Defendant L. Larson.

J. D. ARMSTRONG,
Solicitor for Defendant Railway Company.

Endorsement: Stipulation for Substitution of Complainants. Filed April 21st, 1910. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

222 Circuit Court of the United States, District of Minnesota, Third Division.

JOHN S. KENNEDY and HENRY F. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Upon suggestion to the Court that the above named complainant John S. Kennedy has heretofore died, and that Letters Testamentary on the estate of said John S. Kennedy have heretofore under date of the 22nd day of December, 1909, been issued out of the Surrogates' Court of the County of New York, State of New York, to Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, upon stipulation signed by solicitors for the above named defendants, who have appeared herein, and upon motion of solicitors for complainants, it is hereby

Ordered that said Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, executrix and executors respectively of the Will of said John S. Kennedy, deceased, be substituted as parties complainant in this suit in place and stead of said John S. Kennedy, deceased; and that all orders and proceedings heretofore made or had herein shall bind said executrix and executors, as such, to the same extent as if they and each of them, as such executrix and executors respectively, had been parties complainant in this suit from the time of the institution thereof.

Dated April 19, 1910.

WALTER H. SANBORN, *Judge*.

Endorsement: Order for Substitution of Complainants. Filed April 21st, 1910. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

223 United States Circuit Court, District of Minnesota, Third Division.

No. 857. Equity.

DAVID C. SHEPARD
VS.
NORTHERN PACIFIC RAILWAY COMPANY et al.

No. 858. Equity.

JOHN S. KENNEDY and HENRY F. DIMOCK
VS.
GREAT NORTHERN RAILWAY COMPANY et al.

No. 862. Equity.

WILLIAM SHILLABER
VS.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Whereas the State of Minnesota has made no adequate appropriation to pay the costs of printing, the cost of paying the reporter and the compensation of the special master in these cases, and it is necessary that these costs be paid to the end that the cases may be speedily prepared for hearing, we request the complainants to pay these costs and to leave the matter of the taxation thereof to be determined by the court after the final hearing of the cases.

GEORGE T. SIMPSON,
E. T. YOUNG,
Attorneys for Defendants.

223½ Pursuant to the request of the attorneys for the defendants and in the presence of the attorney for the complainants, who has heard the discussion and seen the request,

It is hereby ordered that the complainants pay all expenses referred to in the request and that the ultimate determination of those who shall pay these expenses abide the decision of the court after the final hearing of the cases in the Circuit Court.

WALTER H. SANBORN,
U. S. Circuit Judge.

St. Paul, Minn., May 11, 1910.

Endorsement: Request and Order in re Costs. Filed May 18th, 1910. Henry D. Lang, Clerk.

Here follows printed copies of three volumes of Testimony printed and furnished by the litigants and used on the hearing before the Court, also printed copies of complainants' and Defendants' Exhibits in two separate volumes, certified separate from this return.

224 Copy.

Circuit Court of the United States, District of Minnesota, Third Division. (In Equity.)

No. 857. Equity.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

and

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Master's Report to the Court.

(Endorsed:) Filed Oct. 29, 1910. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

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225 United States Circuit Court, District of Minnesota, Third Division. (In Equity.)

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles P.

Staples, Charles E. Elmquist (Substituted in Place of William E. Young), H. A. Evarts, C. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolphe Michaud, Defendants.

EMMA B. KENNEDY, ROBERT EMMET TOM, ROBERT W. DE SAULLES and WILLIAM STEWART TOD, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and HENRY P. DIMOCK, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

(Consolidated.)

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Report to the Court.

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230 To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, Third Division, sitting in equity:

Now comes Charles E. Otis, by an order of Hon. Walter H. Sanborn, one of the Judges of said Court, made and filed with the Clerk thereof, in each of the above entitled suits, on the 4th day of May, A. D., 1908, appointed Special Master in Chancery, in said suits, respectively with power and direction to take and report to the Court the evidence therein, to examine such evidence, make all necessary computations, find and state the facts so found and the results of such computations, and recommend to the Court a form of a proper decree in each of said several suits, and respectfully reports:

I.

Introductory.

Having first taken and filed with the Clerk of Court his oath of office in each of said suits, the Master summoned the respective parties before him on the 20th day of May, 1908, for the consideration of the matters to him referred and at the time so appointed it was arranged that Complainants should commence their offer of testimony on the 2nd day of June 1908, and proceed with the same with all convenient speed.

By orders simultaneously made and filed and of like tenor and effect there were, in like manner, so referred to the Master nine several suits, consisting of the three above entitled and six others of the same general nature which at about the same time had been instituted by stockholders of railroad companies doing business in Minnesota as complainants against the respective companies of which the respective complainants were stockholders, the Attorney
231 General of the state of Minnesota and the members of the Railroad & Warehouse Commission of Minnesota as defendants, in all of which the solicitors and counsel were substantially the same. The grievances complained of were of the same general nature and all sought the same relief. Because the issues were identical or closly related, the determination of which would have, as to many of them, a like result in each case, it was arranged that the evidence submitted in any one of the cases in which testimony should be offered should, so far as applicable, material and relevant to the issues in any of the other cases, be received and considered as evidence in

each of the cases. For the same reason, and because the several suits have been tried and submitted together, it has seemed to the Master that he should make and file in each suit in which evidence was offered a report identical in form but so broad as to cover all the matters relative and pertinent to each thereof and that thus the Court would be materially assisted in reaching its determination in several causes.

For convenience, the suit against the Northern Pacific Railway Company and others will be referred to as the Northern Pacific case, the suit against the Great Northern Railway Company and others will be referred to as the Great Northern case and the suit against the Minneapolis & St. Louis Railroad Co. and others as the Minneapolis & St. Louis case.

According to arrangements so made, the taking of testimony was begun and diligently proceeded with, Mr. George N. Hillman, appointed by the Court for the purpose as reporter, taking down the evidence, in the presence of the Master, and transcribing the same, as directed by order of reference, thus making and preserving a full record of the testimony and of all matters and proceedings from time to time had and taken before the Master, all of which, properly certified by the reporter as being full, true and correct, is
232 herewith presented to the Court and filed with the Clerk thereof, to be preserved as a record in each of the suits.

It soon became manifest that it would be impossible to take the evidence within the time limited in said orders by the Court, much of it being statistical and historical in character, covering a long period of years and consisting of many and voluminous tables of figures contained in exhibits requiring careful preparation and the examination of many books of account and records for their proper presentation as testimony in court and for purposes of cross-examination. It was, therefore, eventually arranged that of the nine cases so referred to the Master evidence in three thereof should first be taken and considered by the Master and reported to the Court, and to this end the suits above entitled were selected and it was mutually agreed that the other six suits so referred should rest in abeyance until those selected should have been duly reported to the Court and by it finally determined.

It was further arranged that the taking of evidence in these three cases should be proceeded with as diligently as practicable, alternating as should be most convenient and best facilitate the progress thereof, and without following any fixed order of proof, either on the part of the complainants or defendants, and that the limit as to time for taking testimony fixed by the orders of Court should be considered as removed without making application to the Court therefor, save that the same should be proceeded with diligently and without unnecessary delay.

The taking of testimony in the three above selected cases was not finally closed until May 26, 1910, and final submission to the Master was made on the 29th day of July, 1910.

In the Northern Pacific suit the Complainant Charles E. Perkins has died and by order of Court the suit has been continued in the name of David C. Shepard, the surviving complainant, and
233 by him an amended and supplemental bill of complaint was filed.

The suit of Henry A. James against the Great Northern Railway Company and others has been consolidated with the suit of John S. Kennedy and Henry F. Dimock against the same defendants, and by these complainants an amended bill of complaint has been filed. Said John S. Kennedy has died, his death has been suggested to the Court and the executors of his will have been substituted as parties complainant in his place.

The terms of office of defendant Edward T. Young as Attorney General and of defendant William E. Young as a member of the Railroad & Warehouse Commission having expired, an order has been duly entered by the Court substituting in each of the three cases as parties defendant George T. Simpson, who has been elected Attorney General of the State of Minnesota to succeed said Edward T. Young and Charles E. Elmquist, who has been elected a member of the Railroad & Warehouse Commission of the state of Minnesota to succeed said William E. Young.

The Attorney General and the members of the State Railroad & Warehouse Commission have filed answers to the bills and supplemental bills in all of the above entitled causes. No answer has been interposed by the defendant railroad companies.

The defendants other than the railroad companies, the Attorney General and the members of the Railroad & Warehouse Commission, in the Northern Pacific and Great Northern cases are all citizens of Minnesota and engaged in the business of receiving and shipping freight over the lines of the defendant railroad companies in said state and make use thereof for passenger transportation, and are made defendants as representatives of and to protect the rights of a large class of shippers and passengers, so numerous that it was impracticable to make all of them parties defendant. No answers have been interposed by them or on their behalf save that their rights are fully protected by the answering defendants.

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II.

Legislation and Matters Directly Pertaining Thereto.

By Chapter 28 of the Revised Laws of Minnesota 1905, being legislation originally enacted in 1887 as amended in 1901, the general supervision of railroad and express companies doing business in the state of Minnesota as common carriers, and all public warehouses, is vested in a board of three members known as Railroad & Warehouse Commission, with power to adjust and fix rates and prescribe rules and regulations for the conduct of the business of such companies, and fines and penalties are by said act prescribed for failure to comply therewith. The here material sections of said act are as follows:

"1969. Complaint that rate is unreasonable—Duty of commission—Upon the verified complaint of any person or of any corporation, private or municipal, that any tariff of rates, fares or charges, or any part thereof, or of any classification is unequal or unreasonable, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation

they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such tariff of rates, fares, or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which shall be substituted for the tariff so complained of. The tariff so made by the commission shall be deemed prima facie reasonable in all courts and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same.

"1970. Investigation without complaint—The commission shall also of its own motion investigate any matter relating to the
235 management by any such carrier or warehouseman of its business or the reasonableness of any rates, fares, charges, or classifications, whenever, in its judgment, the public interests require it, and in such case the procedure shall be, as nearly as may be, as provided upon the filing of a complaint, and the findings and order in such case shall have the same effect as those made upon complaint."

During the 1905 legislative session of Minnesota, a joint resolution of the House and Senate was passed, approved April 14, 1905 (Session Laws of 1905, Chap. 350), directing the Railroad & Warehouse Commission "to undertake the work of securing a readjustment of the existing freight rates in this state which will give a more uniform system of rates throughout the state and a uniform scale of percentages which each class rate shall bear to the first class, the re-adjustment to secure a substantial reduction in the existing merchandise rates." At the same time funds were provided to enable the Commission to secure a physical valuation of all the railroad properties within the state.

At the same session of the legislature, by Chapter 176 of the laws of that year, railroad companies within the state were prohibited from changing any state rate except upon application to the Commission and its consent obtained. Theretofore it had been the practice of such carriers to increase or reduce their rates at will without previous notice and free from governmental control.

Prior to such legislation the Commission had been diligent in supervising and regulating the methods of business of such carriers with reference to the furnishing of cars, adjusting minimum carload weights, equalizing as far as practicable rates between localities and between shippers so as to prevent unjust discrimination between such localities and between individual shippers in the same
236 localities, securing reasonable rates and switching charges in particular cases, and supervising like matters arising between shippers and carriers, most of which were usually adjusted by mutual concessions and compromises without formal investigation or order.

With reference to the matter of rates complaints were almost invariably based on one of two claims, either that somebody in the same or in a nearby town was getting a better rate or that the rate to some particular town was unreasonably high as compared with the

rate to some other town on the same or some other line of road with reference to the relative mileage, and such complaints were usually confined to some particular commodity.

Alleged discrimination between localities and shippers, not excessive rates, was, with respect to tariffs, substantially the only ground of complaint.

Through the active interposition of the State Commission reductions and readjustments throughout the state on all railroads were secured in rates upon grain, coal, lumber and livestock in both state and interstate traffic. The Commission had not, however, undertaken to prescribe general schedules or tariffs covering all articles and commodities.

After the legislation of 1905, and pursuant thereto, the Commission made an extended investigation of the so-called merchandise rates charged by all railroad companies throughout the state doing business therein for the transportation of freight merchandise between points in Minnesota without, however, making a physical valuation of the properties employed in such service, and made up and completed full schedules of rates covering all merchandise transportations and notified such railroad companies to show cause why such schedule should not be promulgated as a maximum schedule of rates for all said railroads between points within the state.

Pursuant to such notice public hearings were had before the Commission, extending over a period of several months, in which
237 the railroad companies appeared and took an active part and submitted a large amount of testimony with reference to the matters under consideration, sufficient in the opinion of the Commission to enable it to act intelligently in the premises, and thereupon, on September 6, 1906, it made and served an order on all of said railroad companies, to take effect November 15, 1906, a true and correct copy whereof is annexed to and made a part of the bills of complaint in these cases.

Thereafter, on May 3, 1907, said Commission in like manner made and served on all the defendant railroad companies an order supplemental to said order of September 6, 1906, a copy of which is annexed to the bills of complaint herein and made part thereof, and was made for the purpose of securing more favorable in-rates to a number of jobbing centers other than the eastern terminals of St. Paul, Minneapolis and Duluth, and was so made pursuant to a provision of the order of September 6, 1906, in the form of a note thereto to the effect that such action would be taken if further satisfactory adjustments should not be made by the railroad companies.

The volume of business and increased facilities for handling the same at certain large and important stations called terminal or distributing stations substantially reduced the cost of transportation to and from such points and justifies preferential rates in favor of the patrons thereof—a condition recognized by the Commission's orders. Such rates are known as distributive or terminal rates and are the rates specifically named in the schedules of rates which form a part of said orders.

Rates upon shipments between points neither of which are terminal or distributive stations are known as distance tariff rates and are

the same as terminal rates for like distances with five per cent added.

By the Western Classification, so-called, and to which reference is made in said orders, substantially all commodities and property which are the subject of transportation are classified and ar-
238 ranged in groups with reference to their general character and value and the cost of transportation thereof, and such classification, with modifications from time to time made therein, has long been used by common carriers in the West and Northwest as a basis for fixing rates, the commodities of each class taking the same rate under like conditions. In Minnesota, however, a large number of commodities, amounting to several hundred, have, by the intervention of the Commission, been removed from such Western Classification and given special rates known as "commodity rates" or reduced in class so that the Western Classification in operation in Minnesota is very materially different in many respects from the Western Classification in general use as a basis of rates in other states.

The schedule of rates set forth in the order of September 6th was such that each rate for each class for any distance bore such an exact relation to each other rate that, given one rate out of the schedule, any other rate could be ascertained by mathematical calculation and without reference to the schedule itself. The plan of the schedule is this:

For first-class merchandise an allowance of 11.02 cents per cwt. is made for terminal charges and for each five miles or fraction thereof up to 200 miles, .98 of a cent for hauling charge; so that for a distance of five miles the rate is 12 cents per cwt., for a distance of ten miles the rate is 12.98 cents per cwt. and for a distance of 200 miles the rate is 50.22 cents per cwt. After a distance of 200 miles is reached .98 of a cent is allowed per cwt. as a hauling charge for each ten miles or fraction thereof up to 400 miles; so that the rate for 200 miles being 50.22 cents per cwt. the rate for 210 miles is 51.20 cents, for 220 miles the rate is 52.18 cents and for 400 miles the rate is 69.82 cents per cwt. After a distance of 400 miles is reached .98 of a cent is allowed as a hauling charge per cwt. for each 20 miles or fraction thereof up to 500 miles; so that the rate for 400 miles
239 being 69.82 cents per cwt. the rate for 420 miles is 70.80 cents and the rate for 500 miles is 74.72 cents per cwt.

The rates for classes other than the first class are a fixed per centum of the corresponding rates for the first class, those for the second class being 83⅓ per cent, of the third class being 66⅔ per cent, of the fourth class being 50 per cent, of the fifth class being 40 per cent, of Class A being 45 per cent, of Class B being 35 per cent, of Class C being 30 per cent, of Class D being 25 per cent and of Class E being 20 per cent.

The rates prescribed are maximum terminal rates and may be increased by five per centum for shipments between stations neither of which is a terminal or distributing station.

It appears from the evidence that the rates so prescribed for the first four classes apply alike to merchandise shipments in carload or in less than carload lots, but as to all the other classes they apply only to shipments in carload lots.

The reduction in merchandise rates made by the order of September 6, 1906, was from 20 per cent to 25 per cent, but notwithstanding the extent of the reduction all the railway companies interested put the rates prescribed by the order into effect on the 15th of November, 1906, and they ever since have been and still are maintained by all the companies concerned as maximum rates for the transportation within the state of merchandise covered by the order.

The same is also true with reference to the rates prescribed in the Commission's supplemental order of May 3, 1907, from and since its issuance, which supplemental order, in the Northern Pacific case, effected a reduction of 13.577 per cent in the rates upon the traffic affected by it. To what extent it affected traffic rates in the Great Northern case does not appear. In the Minneapolis & St. Louis case no relief is asked on account of it.

At the same time that the Commission was considering the schedule afterwards incorporated in its order of September 6, 1906, it was also considering a reduction in rates for transportation within
240 the state of commodities in carload lots not covered by the order. Because of the agitation with regard to commodity rates, the three northern systems in the state, the Great Northern, the Northern Pacific and the Minneapolis, St. Paul and Sault Ste. Marie companies, voluntarily reduced their rates on grain approximately ten per cent by filing schedules effective September 1, 1906, and their rates on hard and soft coal at least ten per cent by filing schedules effective October 22, 1906.

Notwithstanding these voluntary reductions and the reductions caused by the order of September 6, 1906, the Commission under date December 14, 1906, effective by its terms January 26, 1907, made its second order reducing rates for transportation within the state of grain, coal, lumber and livestock. The reduction effected averaged from 10 per cent to 28½ per cent or a general average of 17.37 per cent in addition to the voluntary reductions in rates on grain and coal made by the three northern systems as above recited.

In January, 1907, the railroad companies affected by this second order, being all that are parties defendant to the nine pending suits as above set forth, procured an injunction from the Circuit Court of the United States for the District of Minnesota forbidding the enforcement by the Commission of its second order. Thereupon the legislature of the state, which convened early in January, 1907, enacted Chapter 232, General Laws of Minnesota for the year 1907, approved April 18, 1907, and effective by its terms June 1, 1907, fixing a new schedule of commodity rates in all respects like the schedule comprehended in the second order of the Commission excepting that the reduction in rates provided by it was 10 per cent less than that provided by the order—a copy of which legislative enactment is annexed as an exhibit to the bills of complaint respectively.

By Chapter 232 the legislature creates seven new classes,
241 numbered respectively from 11 to 17. Wheat and thirteen other articles are placed in Class 11, corn and thirty-seven other articles in Class 12, lumber and five other articles in Class 13,

sheep in double-decked cars and cattle in Class 14, sheep in single-decked cars and hogs in Class 15, hard coal in Class 16, and soft coal in Class 17. There is no fixed percentage relation between the classes and no regular rate of progression of the various rates with increasing distance. In other respects, however, the method of making the schedules is similar to that adopted by the Commission in its order of September 6, 1906. The hauling charge comprehended in the rates for each class decreases with increasing distance and becomes very small for the added mileage for distances between 300 and 400 miles, which is the limit of distance covered by the Act. On Class 11 the difference between the rate for 300 miles and that for 400 miles is 1.1 cents per cwt. amounting to 2.2 mills per ton per mile; on Class 12 the difference is one cent per cwt. or two mills per ton per mile; on Class 13 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 14 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 15 it is 1.5 cents per cwt. or three mills per ton per mile; on Class 16 it is 34 cents per ton or 3.4 mills per ton per mile; and on Class 17 it is 18 cents per ton or 1.8 mills per ton per mile.

The schedule of rates only applies to shipments in carload lots with minimum weights definitely fixed by the Act.

Meantime and at the same session of the legislature it had passed the so-called two cents passenger law, being an Act approved April 4, 1907, effective by its terms May 1, 1907, prescribing as maximum rates for the transportation of passengers within the state two cents per mile for passengers of twelve years of age or over together with baggage not exceeding 150 pounds in weight, and one cent per mile for passengers under twelve years of age together with baggage not exceeding 75 pounds in weight. The maximum theretofore
242 had been three cents for adult passengers and 1½ cents for persons under twelve years of age.

The defendant railway companies published and put into effect the passenger rates prescribed by said Act on April 4, 1907, and were about to put into effect the commodity rates prescribed by said Act of April 18, 1907, and would have done so had they not been restrained by the writs of injunction issued in these suits. They were apparently influenced in what they did and were about to do both with respect to the Commission's orders and the Acts of the legislature by the severe penalties denounced by the statutes, which, until their invalidity in this respect was judicially determined, as has since occurred, they feared might impose upon the officers thereof heavy fines and long imprisonments.

If said railway companies had refused to obey the orders of the Commission and the acts of the legislature aforesaid, or ceased to obey the same or either thereof, said Attorney General and said Commission were intending to take, and would have instituted proceedings, by mandamus or otherwise, against them and each of them and their respective officers and agents, to enforce obedience to said acts and orders, and said proceedings would have been so taken but for the injunctional orders issued herein.

Before the suits were brought the complainants in each of said cases demanded of the president and directors of the railroad com-

panies of which they were respectively stockholders that they, said president and directors, cease obedience to and that they refuse to obey said respective orders and acts and each of them and that they forthwith institute proper legal proceedings to test the legality thereof. Said respective railway companies and said officers and agents thereof, respectively, refused compliance with said demands because of the aforesaid extreme fines and penalties de-
243 nounced by the statutes in case such statutes should be held legal and operative as punishments for disobedience *to* said acts and orders.

It has been established by proper and sufficient proofs that complainants were qualified to bring these respective suits and that the Court has jurisdiction of the parties and of the subject matter thereof and that said suits are not nor are either or any of them in any manner or to any extent collusive to confer on the Court of the United States jurisdiction of a case or cases of which it could not otherwise have jurisdiction.

Summarized, the reductions in rates which may be charged by railroad companies for interstate transportation within the state of Minnesota so made by its legislature and commission and challenged by these suits are briefly as follows:

1. Reduction in maximum rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commissioner's order of September 6, 1906.)

2. Reduction in maximum rates on passengers amounting to 33⅓ per cent. (Session Laws of 1907, Chap. 176.)

3. Reduction in maximum rates on grain, lumber, live stock and coal amounting to 7.377 per cent. (Session Laws of 1907, Chap. 232.)

4. Reduction in in-rates in distributing stations amounting, in the Northern Pacific case, to 13.58 per cent. (Commission's order of May 3, 1907.)

III.

Authority of Commission to Make Schedule of Rates.

It is earnestly insisted by complainants that the legislature has never conferred upon the Commission authority to make the orders complained of and that the railroad companies were under no legal compulsion to adopt the rates prescribed by them. It is claimed
244 that the extent of the Commission's power was to investigate and readjust particular rates upon complaint or its own motion on notice to the railroad companies to be affected, the investigation to be limited to the matter complained of, but that it was without authority to make general and comprehensive schedules of rates covering all classes of merchandise and commodities upon all railroads and between all points in the state, and the case of Siler v. Louisville & Nashville Railroad Company, 213 U. S. 175, is confidently relied upon to support this position.

Were it not for the joint resolution of the legislature of April 6, 1905, before referred to, the case cited would seem to support com-

plainants' contention. While it is conceded that such resolution has the force of law, they insist, however, that it authorizes the Commission only "to undertake the work of securing a readjustment of the existing freight rates in this state which will give a more uniform system of rates throughout the state and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in the existing merchandise rates," and that this resolution simply contemplates the preparation of rate schedules in furtherance of the desired end therein expressed to be thereafter put in force by legislative enactment.

Authority to undertake a work without words of limitation includes the prosecution thereof until completion, and especially so in view of the language here used designating just what such work is to effect. The resolution clearly takes the case out of the operation of the law as declared in the case above cited.

It does not seem here material, however, aside from the question of interference, hereafter to be considered, whether the orders complained of are void or valid, provided the rates thereby prescribed are in fact just and reasonable. They have been actually adopted and regardless of the influences which may have led to their adoption, if they are reasonable in fact the complainants would have no standing in a court of equity in attempting to compel a
245 return to excessive rates. If there had been no allegations in the bill that the merchandise rates prescribed by the Commission and put in by the railroad companies were unreasonable and confiscatory, it seems clear that as to such rates no case would be stated calling for the intervention of a court of equity. If put in with authority of the state legislature, as is here held, but are in contravention of the commerce clause of the Constitution or the Act of Congress and therefore unlawfully discriminate against interstate commerce, it is doubtless competent for the Court to adjudge their invalidity and compel the defendant company to return to its former rates or to such rates as shall prevent such discrimination—a matter to be hereafter determined. The cases of Missouri, Kansas & Texas Railway Company, et al., v. Love, 177 Fed. Rep. 493, and In re Arkansas Railway Rates, 163 Federal Reporter 141, suggest the propriety of such course.

IV.

Effect of Prescribed Rates if Confiscatory as to One Line of Railway and Not Another.

It has also been urged that if the prescribed rates or any of them are confiscatory as to any of the railroad companies it operates to invalidate such rates even as to those companies which would through them secure a reasonable return on their investment.

This contention was raised and denied in the Missouri rate case and should be followed regardless of the Master's views. He believes, however, that the question was there correctly decided. Whether invalid provisions in a law shall operate to invalidate the whole law

turns upon the question as to whether the legislators would have enacted the law without such invalid provisions, or, in other words, whether the invalid provisions were a consideration for and influenced their action. If the legislators would probably not have acted at all if the invalid features of the law had been first eliminated, then the whole law falls, otherwise not. If, in the legislation here under consideration, a provision had been inserted that the same should not be operative as to any railroad company whenever the effect thereof would confiscate the property of such company, its validity could not be questioned on such ground. In view of the end sought, there can be no doubt that the insertion of the provision suggested, if deemed necessary for its validity, would have had no influence in preventing legislation in such form. The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the legislature in its action along the lines taken by it. This objection must be overruled.

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V.

Interference With Interstate Commerce.

A question of first importance is raised by the complainants in their contention that the prescribed rates discriminate against and operate as a regulation of interstate commerce, and a large amount of testimony has been offered by them bearing upon this phase of the cases. In their view upon the question so raised it is wholly immaterial whether the prescribed rates are reasonable or not. They contend that State-made rates must be made to conform to and not be relatively less than or unduly discriminate against interstate rates, and that the reasonableness of such interstate rates must be determined in the first instance by Congress or its administrative officers, the Interstate Commerce Commission, acting under the Interstate Commerce Statute.

The orders of the Minnesota Commission and acts of the legislature are strictly limited to state commerce, so far as the language used is concerned, and in terms have no reference to commerce without the state, nor do they apparently seek to control interstate rates. It has been held, however, that "If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid whatever may have been the purpose for which it was enacted, and although the company may do both state and interstate business. Such is an established rule of constitutional construction, as the adjudged cases abundantly show." (Telegraph Co. v. Kansas, 216 U. S. 1.

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It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital importance to the continued existence of the company as a going concern, and if state and interstate rates must bear a certain relation to each other, the standard must be fixed by the sovereign power, the Con-

gress, which under the Constitution is given power to regulate commerce among the states. A power enumerated in the Constitution, with all the incidents thereof, is supreme and cannot be in any manner limited by state action. Subject to such power, so conceded to Congress, all rights are reserved to the State, including the right to regulate its internal commerce. "It needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation." (Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196.)

"It is now settled in this court that a State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is
248 done amounts to a regulation of foreign or interstate commerce." (Stone v. Farmers' Loan & Trust Co., 116 U. S. 307.)

In Ames v. Union Pacific R. R. Co. (64 Fed. Rep., p. 172), where this question seems to have been raised by counsel for the defendant, Mr. Justice Brewer said:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the Statute, but surely there is no legal compulsion. The Statute of the States does not work a change in interstate rates, any more than an Act of Congress prescribing interstate rates would legally work a change in local rates. Railroad Companies cannot plead their own convenience, or the effects of competition between themselves and other companies, in restraint of the otherwise undeniable power of the State."

On appeal, this statement of the law, not in form, but in effect, is approved by Mr. Justice Harlan.

The matter of discrimination, in the instant cases made so prominent, does not seem to have been called to the attention of the Court, nor does there seem to have been any evidence in the case bearing upon the question. Here the complainants do not claim that "as a matter of law" local rates necessarily interfere with interstate rates or that companies can "plead their own convenience or the effect of competition between themselves and other companies in restraint of the otherwise undeniable power of the State." What they do insist is that the evidence presented in these cases differentiates them from the Ames case and shows that the prescribed rates if observed are so far-reaching in their effect as to compel disobedience to the inhibitions of the Interstate Commerce Act against discrimination, which in terms forbids a carrier "to subject any particular * * * locality * * * to any undue or un-
249 reasonable prejudice or disadvantage in any respect whatso-

ever," and that such discrimination, enforced as it is by state action, if not denounced by the Act of Congress, is violative of the commerce clause of the Constitution, having in mind the purposes of such provision and the historical conditions giving rise to its adoption.

The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first section of the act, as follows: "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid."

Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State.

This would seem to be in effect a declaration that the act is not intended to apply to any subject outside of Federal control. The primary purpose of the act, as has been repeatedly held, is to prevent discrimination, and it would seem to be a misconstruction of the proviso to hold that it authorized or permitted in its most vicious form that which in another form it so strictly inhibits, especially in view of the fact that there can be no question of the competency of Congress to prevent discrimination between interstate localities. It certainly should not be construed as conferring upon a state power or permission to so regulate commerce within its borders as to hamper or be a burden upon interstate commerce and operate as an unrighteous discrimination against localities in other states. It was such discrimination which gave rise to the commerce clause of the Constitution and it is not to be supposed that Congress intended
250 to give the carrier, or the State acting upon it, a free hand with respect to state commerce without regard to its effect upon commerce between the states. It could not do so if it would. A state has no right to burden interstate commerce for the benefit of its own business enterprises or to subject it to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

"It is of the last importance that the freedom of interstate commerce shall not be trammeled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general rights of the states to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the general government and not in hostility to rights secured by the supreme law of the land." (Western Union Telegraph Co. v. Kansas, 216 U. S.)

That such burden may be imposed by state rate regulations is well illustrated in the case of Saunders & Company v. Southern Express Company, decided by the Interstate Commerce Commission

January 10, 1910, (Opinion No. 1278), where the facts showed that certain state rates put in by the Alabama Railroad Commission under legislative authority discriminated directly and substantially in favor of the City of Mobile, Alabama, against the City of Pensacola, Florida. In delivering its opinion the Commission says:

"The carriage of traffic by a common carrier for one community or one set of shippers at less than it carries the same traffic for a like distance, and under substantially similar transportation conditions, for another community or another set of shippers is not only in contravention of fundamental right and justice but is essentially iniquitous. If such a discrimination is practiced by a common carrier as between communities or different sets of shippers within the same state and on traffic moving only within the state, redress may usually be had under the state laws. On the other hand, if
251 an interstate carrier is guilty of such a discrimination with respect to interstate traffic, redress may be had under the act to regulate commerce. But when a carrier, as in this case, serves two communities similarly situated, by hauling the same traffic under similar conditions from a point of origin to destinations in the same state and also to the same destinations from an interstate point of origin, it is not altogether clear that existing legislation affords redress against a discrimination, as between the two points, when resulting from an order by the state commission. But unless some such power is lodged somewhere under appropriate legislation, it is evident that State-made rates, if established in pursuance of a narrow or selfish local policy, may not only hinder and harm and burden interstate traffic and interstate interests, but may, if adjusted with that end in view, take from a point in another state a business that naturally belongs to that point or in which it is entitled at least to participate, on the basis of equal rates and equal opportunity. * * *

"The defendant is one concern and one instrument of commerce operating through and across those invisible lines that separate the several states from one another. It has but one corps of officers and employees and but one equipment. Its only object is to serve all the shippers in the territory through which it passes. That object is legitimately effected only when it serves its whole constituent public upon substantially similar terms when the conditions are substantially similar. If it voluntarily makes a distinction between traffic that moves from a point in one state to a point in another state and traffic that moves between points in the same state, and gives to the state traffic lower rates than to the interstate traffic moving under substantially similar conditions, it imposes upon the latter a burden that it ought not justly to bear, and it discriminates against one community in favor of another. The same burden and discrimination follow if instead of voluntarily so adjusting its rates it is compelled so to adjust them by the action of a state commission. It may be that this anomaly in transportation necessarily results from our dual system of government and that a remedy is beyond reach without some amendment to the national constitu-
252 tion. On principle it is clear that a carrier operating through two or more states is but one vehicle of commerce, and all traffic moved by it, whether state or interstate, ought,

when the general transportation conditions are the same, to bear its just proportion of the cost of operation and ought to yield no more and no less than its just proportion of the revenues of the carrier. Any other theory is fundamentally inequitable, illogical and unreasonable. It may be, but on that point we express no opinion, that the Congress may constitutionally protect interstate commerce, as well as the carriers that are engaged in interstate transportation, by requiring that any state traffic moved by such a carrier shall bear its just proportion of the cost of operation and yield its proper proportion of profit to the carrier; and that with such an end in view it may authorize this Commission to fix minimum rates, at least, for state traffic when moved by carriers engaged also in interstate transportation; or that it may provide that no carrier engaged in the interstate transportation of passengers or property may at the same time carry state traffic at rates that are less than the rates exacted by it for interstate carriage of like distance and under like transportation conditions. It has, however, not attempted any such legislation, and whether such an enactment would stand the test of scrutiny by the courts under the constitution as it now stands, and if so, whether it would be desirable from the standpoint of a broad public policy, are questions that must ultimately be determined by the legislative power and therefore cannot profitably be discussed by the Commission in this proceeding."

The Commission were of opinion that the Federal law under which they derived their power did not justify them in interfering with the State-made rates although they found that they operated as a burden upon interstate traffic. In view of this finding it would seem to have been competent for the Commission to require the carrier to ignore the order of the State Commission on the ground that in its operation it violated the commerce clause of the Constitution. In a matter of so much doubt, however, it was a proper exercise of adminis-
253 trative discretion not to compel the carrier to disregard the State-made rate until its validity and their own power in the premises had been judicially determined, and especially is this true in view of the fact that in that case the State was not represented and the action of its commission would have been condemned without a hearing on the part of the State. In the cases before the Master, the validity of the prescribed rates is directly in question, not merely as a matter of legal construction, but upon voluminous evidence, with all interested parties present, and the force and effect of the Federal Act and of the commerce clause can be determined in the light of the facts disclosed by such evidence. The facts in this regard are as follows:

1. The Northern Pacific Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway exclusive of lines in Manitoba and its interest in the Spokane, Portland & Seattle railroad comprehending on the 30th day of June, 1908, approximately 7,695.80 miles of track, of which 1,625.20 miles are in Minnesota. Its main line of railway extends from Superior, Wisconsin, and Duluth, Minnesota, which are situated side by side at the westerly end of Lake Superior, and from the cities of St. Paul and Minneapolis, Minnesota, in a westerly direction through the

states of Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle, Tacoma and Portland on the Pacific coast. Between Duluth and other points in Minnesota reached by it the company has both a local and an interstate line of railway, the interstate line passing through Wisconsin and joining the state line at Carlton, Minnesota, twenty miles westerly from Duluth. The Company has a branch line which leaves the main line at Manitoba Junction, 225 miles westerly from St. Paul, and extends in a northerly direction, leaving the state of Minnesota at East Grand Forks, Minnesota, 320 miles from St. Paul and entering the state of North Dakota at Grand Forks, North Dakota, which is at the same
254 official distance from St. Paul, and running to Pembina, North Dakota, which is on the border line between North Dakota and Manitoba and is 414 miles from St. Paul. It has another branch line which leaves the main line at Wadena, Minnesota, 160 miles westerly from St. Paul, and extends in a westerly direction, leaving the state of Minnesota at Breckenridge, Minnesota, 237 miles from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 238 miles from St. Paul, and running thence to Oakes, North Dakota, 311 miles from St. Paul. The main line of the company leaves the state of Minnesota at Moorhead, Minnesota, 250 miles from St. Paul, and enters the state of North Dakota at Fargo, North Dakota, which is 251 miles from St. Paul.

2. The Great Northern Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway comprehending on the 30th day of June, 1908, 8528.98 miles of track, of which 2,779.30 miles are in Minnesota. Its main lines of railway extend from Superior, Wisconsin, and Duluth, Minnesota, in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle and Portland. Its line between Duluth, Minnesota, and other points in Minnesota reached by it passes through the state of Wisconsin. Between Minneapolis and Larimore, North Dakota, the Company has two main lines of Railway. One of these lines extends from Minneapolis by way of Willmar, Minnesota, leaving the state of Minnesota at Breckenridge, Minnesota, 214 miles from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 215 miles from St. Paul, and running thence to Larimore, 345 miles from St. Paul. The other of these lines extends from Minneapolis by way of Barnesville, Minnesota, leaving the state of Minnesota at Moorhead, Minnesota, 241 miles from St. Paul, and entering the state of North Dakota at Fargo, North Dakota, 242 miles from St. Paul, and running thence by way of
255 Grand Forks, North Dakota, to Larimore, 348 miles from St. Paul.

The main line of the Company between Duluth and Larimore runs by way of Crookston, Minnesota, leaving the state of Minnesota at East Grand Forks, Minnesota, 296 miles from Duluth, and entering the state of North Dakota at Grand Forks, North Dakota, at the same official distance from Duluth, and running thence to Larimore, 325 miles from Duluth.

The Company has a branch line of railway wholly within the state

of Minnesota which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

It has another branch line which leaves the main line at Willmar and extends in a southwesterly direction, leaving the state of Minnesota at Jasper, Minnesota, 218 miles from St. Paul, and entering the state of South Dakota, and running by way of Sioux Falls, South Dakota, to Yankton, South Dakota, 311 miles from St. Paul, and to Sioux City, Iowa, 327 miles from St. Paul.

It has another branch line which leaves the Willmar main line at Benson and extends in a southwesterly direction, leaving the state of Minnesota at Nassau, Minnesota, 173 miles from St. Paul, and entering the state of South Dakota and running to Huron, South Dakota, 294 miles from St. Paul.

3. The Minneapolis and St. Louis Railroad Company is a corporation and is a common carrier owning, maintaining and operating lines of railroad comprehending on the 30th day of June, 1906, 632.06 miles of track and operating under lease or trackage rights lines of railroad comprehending on the same date 396.43 miles of track. Its main lines of railway extend from St. Paul and Minneapolis, Minnesota, westerly by way of Winthrop, Minnesota, to Le Beau, South Dakota, from St. Paul and Minneapolis southwesterly by way of Winthrop, Minnesota, to Storm Lake, Iowa, and
256 from St. Paul and Minneapolis southerly by way of Albert Lea, Minnesota, to Des Moines, Iowa.

4. The whole of the railroad properties of each of said companies have for many years constituted and still constitute respective single systems and have been and are operated by each of said companies as such. The cars, engines and supplies of each company customarily have been and are used upon its system wherever required and without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. It always has been and is impracticable and apparently is impossible to operate the property of either of said companies situate in any state separately or to carry on transportation of passengers or freight local to a state separately from interstate passengers or freight touching that state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to a state on the same train and in the same car and interstate freight and freight local to a state on the same train and, if less-than-car-load freight, in the same car; and they could not and cannot practicably or in the exercise of any fair economy whatsoever do otherwise. (See Maquire's testimony in G. N. Case, p. 797.)

5. By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the state of Minnesota is interstate.

For example, for the year 1906, taken as a sample year in the testimony, the freight business of the Northern Pacific Company local to the state of Minnesota was but 2.67 per cent of the Company's entire freight business and but 12.33 per cent of the Company's freight business touching the state; its passenger business local to the state of Minnesota was but 5.79 per cent of its entire passenger busi-

ness and but 67.21 per cent of its passenger business touching the state. (Ex. 54 Johnson.)

257 6. For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a state, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maquire's testimony, G. N. Case, pp. 792 to 795.)

Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining state, and each of them still maintains such equable basis of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within Minnesota or interstate between Minnesota and an adjoining state.

Any substantial change in the basis of rates or in any particular rates due only to the fact that the transportation was interstate or that it was local to a state would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the state of Minnesota and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p-. 1320-1, and Baird, p-. 2198-9.)

7. Superior, Wisconsin, and Duluth, Minnesota, are sit-

258 uated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets and receive and ship the same kinds of articles. Any substantial difference in

rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city. (See Baird's testimony, N. P. Case, p. 1456-8.)

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior.

8. The schedule comprehended within the Order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent to 25 per cent
259 lower than those theretofore established by the Northern Pacific and Great Northern companies, and maintained by them up to the time of the taking effect of the Order for transportation in Wisconsin, Minnesota and North Dakota regardless of whether such transportation was local to either state or interstate between any two of them. If these companies after the installation of the rates prescribed by the Order for transportation within Minnesota had concontinued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the Order the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed 54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for transportation between Minnesota and an adjoining state and the rates prescribed by the Order for transportation within the state. (Ex. 41 Baird.)

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the Order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo and Wahpeton, North Dakota, and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1
260 cents per cwt.; and on fifth class from 27 cents to 21.7 cents per cwt. (Ex. 41 Baird.)

These reductions were compelled by the necessary and direct effect of the operation of the Order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Breckenridge, respectively, nor

could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line. (Maguire, p. 815, G. N. Case.)

9. Moorhead, Minnesota, Fargo and Bismarck, North Dakota, Billings and Butte, Montana, are so-called "jobbing centers." Prior to the taking effect of the Order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of carload rates from St. Paul, Minneapolis and Duluth to these centers and the less-than-carload rates out from these centers to the territory geographically tributary to them respectively had been such as to compare favorably with rates in and out
261 of their local competitors as well as with less-than-carload rates from St. Paul, Minneapolis and Duluth into the territory geographically served by them respectively. The Order of September 6, 1906, as supplemented by the Order of May 3, 1907, substantially reduced carload rates from Duluth, St. Paul and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry not only as against Fargo unless carload rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul and Minneapolis unless less-than-carload rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction unless accompanied by a corresponding reduction in carload rates to Fargo from the eastern terminus would have served to build up Moorhead at the expense of Fargo and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of carload rates into Moorhead and less-than-carload distributing rates out on the one hand, and less-than-carload distributing rates from Duluth, St. Paul and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in carload rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and then, unless carload rates from the eastern terminals to Bismarck and less-than-carload rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue

and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on carload lots from the eastern terminals to Bismarck should be correspondingly re-
262 duced. And so on, from distributing point to distributing point.

10. Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate-making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same. Because the rate for 250 miles includes two terminal charges, and if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate-making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the Order of September 6, 1906, and now maintained by the Company between St. Paul and Moorhead discloses that the Commission-made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the Company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire haul. For example, the present rate maintained by the Northern Pacific on Class E, merchandise from St. Paul to Miles City, 743 miles from St. Paul, is 39 cents per cwt.; the rate to Moorhead, based on the proportion of 39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The Order allows only 11 cents per cwt. from St. Paul to Moorhead, in which of course are included two full terminal charges. Maintaining rates comparison of which shows this
263 result, involves substantial, undue and unjust discrimination in fact against the interstate localities. (Ex. 46, Baird, N. P. Case.)

11. After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the Order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many ploints in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the Order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

It was suggested on the trial by solicitors for defendants that these reductions were made by the companies upon complaint of merchants of St. Paul, Minneapolis and Duluth; but the uncontradicted testimony of the chief witness for the complainants on this point was that the reduction was made in order to protect the power of the railroads to do interstate business,—to remove the ability of the shippers to ship to Moorhead and trans-ship to the point of destination. As a matter of fact, the reasons for such reduction were to prevent trans-shipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and as to less-than-carload lots to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto, an advantage to which it cannot be said such
264 jobbers were entitled although they had been able theretofore to participate in such business.

12. It is one of the fundamental dogmas of rate-making that the haulage charge per mile shall not increase with increasing distance if conditions be the same. The Order of September 6, 1906, promulgates a schedule which for first class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per five miles up to 200 miles, then a haulage charge of .98 cent per ten miles for added distance up to 400 miles, and then a haulage charge of .98 cent per twenty miles up to 500 miles—the limit of distance covered by the Order. Both the terminal charge and the haulage charge allowed for the other merchandise classes are a fixed percentage of those allowed for First. Under this schedule a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48 miles, at the rate of .98 cent per ten miles when Moorhead is reached. If this same haulage charge of .98 cent per ten miles be applied for the remaining distance of the haul from St. Paul to Spokane, Washington, 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would produce a rate from St. Paul to Spokane on First class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the Spokane Rate Case has fixed the reasonable rate on First class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against
265 localities westerly of the Minnesota-North Dakota boundary line. Defendants' solicitors, however, insist that in extending the State-made rate beyond the boundary line, if an equable basis is sought, the ton-mile charge for such extension must be found by dividing the total charge to such line by the distance to it from the

point of origin, which would considerably increase the extension rate beyond the State line over the rate if extended by the method suggested by complainants. This method suggested by defendants is not the principle, however, on which the State schedule of rates is constructed, and even so it does not give traffic carried on the extended interstate rate the benefit of the spread of the two terminal expenses over the longer haul.

13. For more than twenty-five years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte and between its eastern terminals and localities intermediate between them and Butte and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph and Kansas City on the east, and from San Francisco, Sacramento and Los Angeles on the west. Butte has been as the hub of a wheel with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission-made rates between its eastern terminals and Moorhead and at the same time, its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate
266 stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission-made rates between its eastern terminals and Moorhead it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific coast.

14. Prior to the taking effect of the Order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them respectively, and these rates were in force at the time of the taking effect of the Order. After the rates prescribed by the Order were installed, the sum of the locals on St. Paul from all localities southerly and easterly of Minnesota to all localities in Minnesota westerly of St. Paul and Minneapolis reached by these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities east-

erly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul; because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the theretofore established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rates prescribed by the Order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid this discrimination the com-
267 panies forthwith after the taking effect of the Order withdrew the then existing interstate rates and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rates from Chicago to Wadena, Minn., on First class merchandise was $1.09 per cwt. The sum of the locals on St. Paul after the taking effect of the Order was $1.004. The present through rate is $1.004, being a reduction of 8.6 cents per cwt. (Ex. 44 Maguire, pp. 818-20, G. N. Case.)

15. The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have, prior to the taking effect of the Order, maintained an equable basis of rates in the territory which these two states compose without regard to state lines. For example, the interstate rates from Moorhead, Minnesota, westerly into North Dakota have been the same as from Moorhead easterly into Minnesota and no conditions have existed or do exist which justify a different basis of rates for eastbound to that for westbound transportation.

Prior to the installation of the rates prescribed by the Order the rate per cwt. of First Class merchandise for 100 miles, for example, out of Moorhead, whether westerly into North Dakota or easterly into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the Order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of First Class merchandise 30.6 cents. This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases constitutes an undue preference and ad-
268 vantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota. If the Companies maintaining this relation of rates, unfair in fact, are to continue to maintain the rates prescribed by the Order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota. (Ex. 35 Baird, N. P. Case.)

16. The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the Company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the Order the rate per cwt. of First Class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission-made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact. (Ex. 46 Maguire; testimony, Printed Record, p. 796, G. N. Case.)

17. The Order of September 6, 1906, prescribes a basis of rate-making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given
269 the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul of Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, South Dakota, 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul of Nassau, the border Minnesota town. Between St. Paul and Wilmar, Minnesota, 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the Order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for First Class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each ten miles beyond 200 miles and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per ten miles for First Class.

When the line between Minnesota and South Dakota is reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with

the other, the same basis of making the rate, the same rela-
270 tion between rates for different distances and different classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates. (See Maguire's testimony in G. N. Case, p. 795-6.)

18. Since the taking effect of the Order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists
271 and constitutes undue and unjust discrimination in fact. Complaints have been made to the companies of the existence of this discrimination. [Baird (N. P. Case) 1540-1; 1467; 1523; 1527; 1464; 1507; Elliott (N. P. Case) 1384; 1385; 1404; Maguire (G. N. Case) 794; 832; 841; 798, 799.]

19. St. Cloud, Minnesota, is on the Barnesville main line of the Great Northern and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minnesota, is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's Order of May 3, 1907. Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as

for the same distance westerly of St. Cloud. Because they are distributing rates from Fergus Falls to points within that distance westerly should be the same as from St. Cloud to points of equal distance westerly. Rates on articles covered by the Order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

20. The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie (wholly, excepting certain limited tracts
272 in which grain cannot be grown—such as the Bad Lands of North Dakota) within grain fields; and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis and Superior.

Shipments of coal originate at the Head of the Lakes, that is to say, Duluth, Minnesota, or Superior, Wisconsin, and find their destination at all localities served by the Companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls and other points in Minnesota and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota and eastern Montana and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the Companies or at Superior, Wisconsin.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportaion of live stock whether
273 the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact

to the localities given the lower basis. Establishing the rates prescribed by Chapter 232, Gen. Laws, 1907, and maintaining these rates for transportation wholly within Minnesota simutaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the Companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis prescribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by Chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum carload of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum carload.

274 21. Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan and Milwaukee, Wisconsin, Gladstone, Michigan, Chicago, Illinois, the Peoria, Illinois, district, the Springfield, Illinois, district, the Streator, Illinois, district, and the La Salle, Illinois, district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by Chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232, from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

22. Interstate rates on cattle, hogs, sheep and coarse grain would be affected by the rates prescribed by Chapter 232 in the same manner as has been found with regard to rates on wheat and coal.

23. Under the milling-in-transit privileges, so-called, owners of wheat at any point in Minnesota, North Dakota or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minne-
275 apolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis a like milling-in-transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis; and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling-in-transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling-in-transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless then all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling-in-transit privilege shall be reduced to a substantial parity with the reduced milling-in-transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state and wheat in general will as a result of this advantage go to Minneapolis.

24. Prior to the taking effect of Chapter 97, Gen. Laws 1907, the general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents per mile for passengers of twelve years of age and over, and one and one-half cents per mile for passengers under twelve years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota two cents per mile for passengers of twelve years of age or over and one cent per mile for passengers under twelve years of age.

276 After the maximum rates prescribed by Chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97 the revenue for passenger business on the Northern Pacific between Moorhead and other Minnesota points increased 647 per cent over that for the corresponding month of the preceding year, while, eliminating Moorhead business, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after

the taking effect of Chapter 97 there were sold by the Northern Pacific Company 4037 tickets between St. Paul or Minneapolis on the one hand and Moorhead or East Grand Forks on the other as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis on the one hand and Grand Forks and Fargo on the other as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis; in those months in 1907 there were 1168 full cash fares and 82 cash half-fares so collected.

These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

25. Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the Company, one of which should cover the mileage
277 in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket did not know that the sum of the locals on Moorhead was less than the through rate, against the pas-enger with a trunk which he could not check through unless on a through ticket, against a passenger who was compelled to use a sleeping-car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs establishing the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume.

278 26. Prior to the taking effect of the respective orders complained of and of the two cents maximum passenger fare law,

the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the Companies and each of them for the transportation of commodities covered by Chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective Orders destroyed that fairness as to merchandise rates, the installation of the two cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by Chapter 232 would destroy it as to rates on commodities covered by it.

27. It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific and Minneapolis & St. Louis companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of the value of property in Minnesota and the serious impair-
279 ment of the value of the property of all business men as well as of that of the carriers themselves in the neighboring states.

28. Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate-making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carrier serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city. (As bearing generally upon the foregoing findings, numbered 1 to 28, relating to the question of interference, see testimony of Staples, (N. P. Case) pp. 2646, 2649, 2650, 2704-2790, 2891, 2916).

29. If it shall be necessary for the companies involved, in order that discrimination may be avoided, or in order that the companies may preserve the volume of their respective busi-

nesses in interstate transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the Act and Order complained of, and to extend the rates for their interstate long-haul business upon the principal provided in said Act and Order, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30,
280 1906, the last fiscal year prior to the taking effect of the Order of September 6, 1906, from its interstate business in transportation of commodities covered by Chapter 232 alone, if the basis prescribed by Chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the Order of September 6, 1906, if the basis prescribed by the Order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the Acts and Orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the Acts and Orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss in revenue of the Northern Pacific Company, if the basis prescribed by Chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the Order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and if the two cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the Acts and Orders complained of, of $2,142,094.16.

The foregoing findings of facts with respect to the effects of the prescribed rates upon interstate traffic, established as they are
281 by convincing and undisputed testimony and supported by the records and papers of the respective companies, are made without regard to the justness or otherwise in fact of the interstate rates so affected by such local rates, and as this can be determined only by Congress or its administrative agent the Interstate Commerce Commission, subject of course to the power of the Court in a proper case to prevent confiscation or extortion, this Court cannot, in this suit, determine the reasonableness or otherwise of such interstate rates. Before it can take cognizance thereof the question must have been presented to and passed upon by the proper Federal tribunal created for that purpose. Until then, as they are legal, they must be accepted as reasonable and the State can take no action

which will compel a modification thereof as a condition of doing interstate business.

Interference with interstate commerce arises from the fact that to prevent discrimination the rates must be modified so as to correspond substantially with the State-made rates and from the further fact that interstate commerce cannot in general be maintained at all unless they are so modified. It was directly held in Louisville & Nashville Railway Co. v. Eubank, 184 U. S. 27, that the carrier cannot be compelled to adjust its interstate rates with reference to State-made rates, and since they must harmonize to prevent unjust discrimination and to enable the carrier to retain its interstate business, the State in its regulation of rates must do so with reference to their effect upon interstate commerce.

The facts as found establish conclusively that the State in the rates prescribed by it has not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities.

If when this case was in the Supreme Court, and on the
282 record then before it the Court could say with reference to the claim of interference then made that "The question is not, at any rate, frivolous," it would seem that on the facts here found to exist a conclusion that the prescribed rates operated as a direct interference with and a burden upon interstate commerce must be inevitable. It follows that the relief sought in these several suits must be granted.

The question as to whether the orders of the state commission and the acts of the legislature complained of constitute such an interference with interstate commerce and operative as a burden thereon by reason of the matters of fact hereinbefore found to exist is, however, not altogether free from doubt, and it is proper, therefore, regardless of the views of the Master, that he should proceed to make findings upon all the issues in the case.

VI.

Valuations of Property Devoted to Public Service.

In determining the remaining issues in the case, the initial step is to ascertain and determine the value of the property devoted to the public service and upon what basis such valuations should be made. In the leading case of Smyth v. Ames, 169 U. S. 522, adhered to and constantly cited in every rate case since coming before the courts, the following language is used:

"It cannot be assumed that any railroad corporation, accepting franchises, rights and privileges at the hands of the public, ever supposed that it acquired, or that it was intended to grant to it the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public services and
283 the people financially interested in its business and affairs

have rights that may not be invaded by legislative enactment in disregard of the fundamental guarantees for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it.

* * * * * * *

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Here we have a clear declaration that a corporation performing a public service cannot be required to use its property for the benefit of the public without receiving just compensation therefor, not some compensation but just and reasonable compensation, based upon the value of such property. There are, of course, exceptions to this rule. Under no circumstances can the rates be excessive, extortionate or unreasonable. They must be just to the public as well as to the carrier. If the road was unwisely conceived, unfavorably
284 located and not constructed in response to public demand, a return upon such value is not to be expected if it compels unjust rates. But no conditions exist in these cases to take them out of the general rule.

It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates. As again stated by the same Court in Wilcox v. Consolidated Gas Company, 212 U. S. 19: "There must be a fair return upon the reasonable value of the property at the time it is being used for the public * * * and we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule."

This clearly shows that the company is to share as well as the public in the general growth and prosperity of the country. It would seem, therefore, that the value of these properties can best be determined by reference to the cost of reproduction at the present

time. As stated in the Wilcox case, cited in the decision rendered by the lower court upon a review of prior decisions of the Supreme Court of the United States,

"It is impossible to observe this continued use of the present tense in these decisions of the highest court without feeling that the actual or reproductive values at the time of inquiry is the first and most important figure to be ascertained."

The roads under consideration were constructed and completed many years ago and what may have gone into them, if it could be determined with reasonable certainty, would not take into consideration the changed condition of the country since their original construction, its growth and prosperity—in which the companies are entitled to share—and by reason of changed conditions
285 and lapse of time it has little weight in arriving at present values. As stated by Judge Hook in the recent case of Missouri, Kansas & Texas Railway Company v. Love, et al., in this circuit,

"There is another matter to be regarded, not specifically mentioned in the above excerpt from the opinion of Mr. Justice Harlan. An established railroad system may be worth more than its original cost and more than the mere cost of its physical reproduction. It has passed the initial period of little or no return to its owners which, of greater or less duration, almost always follows construction and is not infrequently marked by default and bankruptcy. The inevitable errors in its building which finite minds and hands cannot avoid have been measurably corrected, time and effort have produced a commercial adjustment between it and the country it was intended to serve, relations have been established with patrons, and sources of traffic have been opened up and made tributary. In other words, the railroad, unlike one newly constructed, is fully equipped and is doing business as a going concern. It has attained a position after many experiences common to railroad enterprises which entail loss and cost not paid from current earnings and which correspondingly make for value."

It is here proper to say that the foregoing decision was written in a very carefully considered case, in which many of the issues were practically the same as in the instant cases, and wherever applicable it must control the Master in determining the questions here raised. And this is so not only because it is a decision of one of the judges of this court but because it is in harmony with other like decisions of this court and of the Supreme Court of the United States and contains, as the Master believes, a comprehensive and accurate statement of the law and discloses a lucid conception and clear expression of the facts which are very generally found to exist in all these railroad rate cases. Practically everything contained in that decision is applicable to or has a more or less direct bearing
286 upon the cases here under consideration and completely covers and denies many of the contentions of counsel for the State—urged at great length and with marked ability before the Master.

In the light of this decision and others therein referred to and approved, our first duty is to ascertain the fair value of the property devoted to the public service.

To this end a large volume of testimony was produced before the Master on behalf of complainants and the State, respectively, as to the reproduction cost of such property—and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have but as to them the public has no concern.

Prior to suit brought the State by its Railroad & Warehouse Commission called upon the defendant railroad companies and all other like companies in the state for a statement of all the properties of the companies, respectively, devoted to public use, with the valuation and the cost of reproduction new within the state, such statement to be made and returned upon itemized blank forms or schedules furnished for the purpose consisting of thirty-nine different items, into which divisions were to be made, and which when filled out would constitute an estimate of cost of reproduction of all the physical properties of each of said companies as made by it.

This led to a personal examination of the physical properties of the railroad companies which was made by the State's engineer, employed for the purpose, and also by the agents and officers of the respective companies, and such schedules as so filled out and returned, with sundry modifications thereof by them made, have been produced before the Master, and testimony in support thereof was given by witnesses making such examinations. Three competent
287 and reliable real estate agents in each of the cities of St. Paul, Minneapolis and Duluth were selected by the railroad companies to make an appraisal of the terminal properties, exclusive of improvements, of each of the roads in their respective cities, and the valuations placed upon the properties by said several sets of appraisers in their respective cities, supported by their testimony produced before the Master, have been used by complainants as a basis for terminal values in said respective cities. These examinations and appraisements of railroad physical properties were made in the years 1906 and 1907 and the valuations so found were brought up to June 30, 1908, by adding thereto the valuations of properties acquired after such examinations and appraisements were made at the actual cost thereof.

The evidence discloses a wide difference of opinion with reference to the value of these properties, and in fairness to both parties to the controversy the Master has made findings as to each item in the schedule referred to and produced before him, and, where as to any item there is a very substantial difference between the parties, or between them and the value so found by the Master, he has briefly stated his reasons for the findings made.

The Master's findings of value are as follows:

VII.

Real Estate Valuations as of June 30, 1908.

Item 1. Lands for right-of-way, yards and terminals:

Northern Pacific case, amount allowed		$21,024,562.90
This amount is made up as follows:		
Terminal properties, St. Paul appraisement of Read, Watson & Taylor, as modified by railroad company	7,645,100.24	
Add 5 per cent for the cost of acquisition and consequential damages	382,255.01	
288 Property acquired after appraisement	328,725.69	
Minneapolis, appraisement of Elwood, Barney and Ridgeway, as modified by railway company	4,027,616.17	
Add 5 per cent for acquisition and consequential damages	201,330.80	
Property acquired after appraisement	227,737.26	
Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.43	
Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85	
Total value of terminals	17,315,869.45	
Lands outside of terminals	3,708,693.45	
Grand Total	21,024,562.90	
Great Northern case; amount allowed		25,172,630.80
St. Paul, appraisement of Read, Watson and Taylor	6,433,348.00	
Add 5 per cent for cost of acquisition and consequential damages	321,667.40	
Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00	
Add 5 per cent for cost of acquisition and consequential damages	580,968.15	
Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00	
Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00	
Total value of terminals	19,847,366.55	
Lands outside of terminals	5,325,284.25	
Grand total	25,172,650.80	
Minneapolis & St. Louis case; amount allowed.		5,999,397.90
289 Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00	
Add 5 per cent for cost of acquisition and consequential damages	227,814.90	
Land outside of terminals	1,215,285.00	
Grand total	5,999,397.90	

In arriving at the foregoing valuation of terminals, upon a careful examination of the testimony the Master has taken the valuation of the terminal properties made by the three appraisers appointed by the railroad companies in each of the three cities named and who gave their testimony in these cases as found in the record and made such valuation a basis for his conclusions. He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St. Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property.

While it is true that the highest value of these terminal properties is their adaptability for railroad purposes and they must be acquired in a continuous tract suitable and convenient to meet the demands of the business and traveling public, thus largely enhancing their value, yet it is not true that these values for such purpose are limited only by the needs of the company and upon the theory that it must have the property or abandon the enterprise. It is not the needs of the company but the peculiar fitness and adaptability of the property for railroad purposes which gives it an enhanced value—often very much greater than for any other purpose. The fact that there is other property equally available in the immediate vicinity that a line of road of substantially the same efficiency and answer-
290 ing a like purpose can be secured by changing its course or the location of terminals may be properly taken into consideration as bearing upon railroad value. While it is true that in these cases these particular terminals and rights of way are the subject of valuation, and no other, still such valuation must not be based upon the assumption that the companies must have them at any price and must pay anything the owner sees fit to exact, but should be determined and controlled, as far as may be, by a survey of the whole situation, and comparisons, where they can be made, with other properties which are in like manner available.

The right of eminent domain is given to the company for the purpose of preventing the property owner from taking advantage of the necessities of the company as to any particular tract. While it is intended to secure to him its full and fair value for any purpose for which it is best adapted—and to this end an appeal is given to the courts from unrighteous awards—we are not to lose sight of the fact that railroads must be constructed along continuous lines and that the topography of the lands through which the lines are projected has much to do with their availability for railroad purposes and that such availability necessarily and properly enhances their value, for which the owner is entitled to compensation, and so it comes about that properties so available and favorably situated for the purpose have a much greater value than other adjoining or adjacent properties not so conditioned.

The Master is of the opinion that the appraisers of the St. Paul and Minneapolis terminals were fully impressed with their value for

railroad purposes and their appraisement, as verified by them before the Master and as modified in the Northern Pacific case, is a generous valuation and should be accepted as full railroad value of the terminal properties and has been by him so accepted with an addition of five per cent to cover cost of acquisition and conse-
291 quential damages, and which seems ample for the purpose in the large cities. The peculiar location of the properties did not seem to require a large increase on this account.

In Duluth, the appraisers were much more moderate in fixing values and seemed to have adjusted the same with reference to the adaptability of the property for general business enterprises and not to have taken into consideration their special and increased value for railroad purposes. It is determined that their appraisement, increased by twenty-five per cent thereof, all things considered, will fairly cover reproduction cost, and their valuation is fixed at such sum accordingly.

The Master has not overlooked the testimony offered by the State bearing upon these valuations and has given to it such consideration as in his opinion it was entitled to. It is proper to say, however, that it has not impressed him as entitled to much weight. The avowed purpose of the State was to get away from opinion values as much as possible owing to the fact that witnesses are necessarily and unconsciously influenced by the interests of those at whose instance they are called, however fair and unbiased they may intend to be—considerations which the Master in fixing values has kept in mind. To this end the State has not offered the opinion of any witness as to the value of any of these terminal properties,—ignoring, as it would seem, the fact that real estate values are necessarily and largely a matter of opinion when applied to any particular tract or parcel of land. As a substitute therefor the State's engineer and chief witness on this subject has adopted a method, in each of the three terminal cities, substantially as follows, taking the city of St. Paul as an example:

He ascertained from the records the selling price of genuine sales of land for a period of years, and amounting to a large number, in every part of the city. The selling price of the lands without improvements, so far as this could be ascertained, was compared with the assessed value thereof, and it was found that on the aver-
292 age the assessed value was about sixty per cent of the selling price of such lands, and from this comparison the market value of the lands for general purposes was ascertained. Then the lands at varying width on each side of the side of the center line of the railroad land to be valued was divided into sections so that the lands in each section, according to his judgment, should be as nearly as practicable of like value, and the assessed value of the lands in such section was obtained and such assessed value was determined to be sixty per cent of the market value of the lands assessed. The market value, or, as he styles it, the "true value" so found was then applied to the railroad lands within the section, and to find their railway value, seventy-five per cent thereof was added to such market value, it having been determined by him that railroad com-

panies have to pay on the average seventy-five per cent more for properties required by them than the market value as so found.

Such, in brief, is the State's method of producing terminal property values, and generally known as the assessment and sales method. It is conceded that when applied to any particular tract of land it cannot be relied upon, but it is claimed that when applied to extensive contiguous tracts, as are rights of way, the doctrine of averages will bring about reasonably correct results. To make a market value assessment, the assessor could not rely on such methods with respect to any particular tract, but would be compelled to make a personal inspection and determine whether assessment must be reduced or increased and where it stood with reference to such average. We can understand that, for the purpose of equalizing values as between counties where many contiguous sections of land are under consideration and for the purpose of making each county pay its relative proportion of state taxes, such method would be of great value by reason of the broad base for purposes of comparison,
293 but the relative market value for the counties having been ascertained, then a personal inspection by the assessor would be necessary of each tract assessed to determine whether the assessment must be reduced or increased, that is, whether as previously assessed it was above or below the general average.

The evidence shows that the railroad lands in St. Paul constitute about eight per cent of all the assessed lands in the city, and, distributed among all the railroads owning terminal properties, each has but a very small per cent thereof. These considerations, added to the notoriously gross inequalities of assessments, compel the Master to give little weight to testimony of this character. On the other hand, he does not conceive he is bound to accept opinion testimony as absolute but only as a large determining element in connection with all the facts and circumstances disclosed in the evidence, and this has been done in reaching his conclusions. He has given careful consideration to actual purchases recently made in acquiring property for railroad purposes and cited to show that they substantiate values fixed by the witnesses on either side, for of course they are of great value for such purpose.

No deduction has been made for street crossings or parts of streets used for right of way held under rights acquired from the respective city authorities without acquisition of the fee. For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property.

With reference to right of way values outside of terminals, opinion testimony has been submitted by both parties, and, save in the Minneapolis & St. Louis case, there are wide differences between them. They have both used multipliers, generally of three, to cover cost of reproduction over market value. That is, the market value of adjacent lands has been ascertained and applied to the
294 right of way lands and such value multiplied by three to ascertain what it would cost a railroad company to acquire the property. Whether this multiple has been used in the same

manner, having in mind the same basis is somewhat doubtful. In determining such basis the Master believes the witnesses for complainants have been somewhat expansive, influenced measurably by the increased value for railroad purposes over its ordinary market value for farm purposes, and have used too large a multiplier. At the same time, the testimony of the chief witness for the State is much impaired by the fact that he evidently based his estimates upon valuations as fixed by the complainants' witnesses, of which they are found to be, in some fifty-two villages on the Northern Pacific road, an exact per cent and ranging from twenty to eighty per cent lower than such valuations. (See Exhibit 75—Cooper.) It is not doubted that he made as careful and painstaking effort, within the limited time he was able to devote to the purpose, as was practicable to ascertain and determine the market value of the properties appraised, but the weight of such testimony would have been manifestly greater if valuations had been independently fixed by him without regard to those previously made by the railroad company. At the same time the fact that his values of such property in the Minneapolis & St. Louis case, as also of much other property on that line of railway, were so nearly the same as the value of the chief witness for complainants in that case that they were able to compromise their differences has a tendency to corroborate his values on the other roads.

Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, seventy-five per cent of the valuations as fixed by complainants' witnesses has been determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases.

295 Item 2. Grading, clearing and grubbing:

Northern Pacific Case: Amount allowed.....$12,331,541.52

After allowance by State for adaptation and solidification placed by it in an item by itself, and by complainants included in this Item 2, the difference between the parties is substantially $850,339.68, and is fully accounted for by inadequate unit prices and insufficient quantities adopted by the State's witness as the basis of his estimate.

Item 2. Great Northern case:

Amount allowed $21,685,802.00

Complainant claims for this item $22,155,453, which includes $3,235,022.91 allowed by the State as a separate item for adaptation and solidification of road-bed and $443,227 for additions to the road after June 30, 1907—to which time only the State's estimates were made. This left a difference between the parties of $1,798,792.85. I have credited the complainant with this difference except items for abandoned right of way, amounting to $135,876, and the further sum of $333,775 for estimate of work not of record. There seems to be no substantial reason for not allowing for the extra work

shown by the records and also the usual ten per cent increase on work shown only by profile—a usual allowance for profile estimates and so recognized and accepted by the State's engineer in the Northern Pacific Case. As to unit prices, the weight of evidence in this and the other cases shows that the State's witness in the unit prices used by him failed to allow an adequate amount for extra cost of other than contract work and in this respect unit prices fixed by complainants' witnesses should be accepted.

Item 2, Minneapolis & St. Louis case:

Amount allowed $2,551,690.00

Item 3, protection work, rip-rap and retaining walls:

Northern Pacific case: Amount allowed..... $374,091.53

The State's testimony would very materially increase this amount.

296 Item 3, Great Northern case:

Amount allowed $850,069.00

It is conceded that as to this item the only difference between the parties is as to the unit prices. In the Northern Pacific case the price of $2 per yard for rip-rap claimed by complainant's witness seems to have been conceded by the State, and no reason appears for the State not conceding it here and insisting, as it does, that only $1.25 per yard should be allowed.

Item 3, Minneapolis & St. Louis case:

Amount allowed $52,240.00

Item 4, Tunnels:

Northern Pacific case: Amount allowed..... $253,250.00

The chief difference between the parties concerning this item is as to the allowance of anything for the Seventh street viaduct, so-called, in the city of St. Paul, constructed by the city after the road was built. The Northern Pacific Company did not construct this tunnel, nor does it appear from the evidence that even under the latest decisions of the courts it could have been compelled so to do. It is, so far as appears, a permanent structure not likely to require repair or replacement; at least the evidence does not disclose to the contrary. It forms an adequate passageway for the movement of trains, as much so as if created by natural conditions, and is substantially different from overhead bridges and like structures which the company could be compelled to reconstruct and maintain and which will require frequent repairs, renewals and replacements. If such were required, it may be assumed, in the absence of testimony to the contrary, that the city would be obliged to do the work and that the company's rights were properly safeguarded when it consented to the construction of a causeway over its right of way.

Item 4, Great Northern and Minneapolis & St. Louis cases. There are no tunnels on these lines in Minnesota.

297 Item 5, Cross-ties and switch-ties:

Northern Pacific Case: Amount allowed.....$3,657,576.70

Accepted as claimed by complainant and includes transportation.

Item 5, Great Northern case:

Amount allowed $5,460,809.00

The complainants have taken as average price of ties 70.5 cents. The price for ties as claimed in the Northern Pacific case, with a larger per cent of high-grade ties, is 67.2 cents, which is deemed fair and is accepted for this case. The State's valuation of 55.5 cents per tie is based upon prices in 1905 and does not allow for inspection and handling. The rapidly increasing price of ties since that time clearly justifies the finding here made.

Item 5, Minneapolis & St. Louis case:

Amount allowed $1,149,829.00

The ties on this road were high-grade, oak and cedar exclusively, and the price claimed for same, respectively, 75 cents for oak and 65 cents for cedar, is accepted, being the same as allowed in the Northern Pacific case for such quality of ties. The State found a shortage of 32,000 ties in the number claimed and a deduction is made therefor at 70 cents per tie, it not appearing of what kind the deficiency consisted.

Item 6, Ballast:

Northern Pacific case: Amount allowed.....$1,960,969.00

This amount is found by taking the same unit price as in the Great Northern case of 62 cents per yard.

Item 6, Great Northern case:

Amount allowed $3,861,360.00

The main difference between the parties is unit prices. A careful analysis of the testimony justifies the prices and quantities claimed by complainants of 62 cents per yard. The State clearly overlooked items of expense in a very considerable amount in the unit
298 prices of 45 cents per yard adopted by it. Other reliable testimony fixes such prices much higher than those above allowed, while complainant's chief witness, from actual measurements on the ground and records of the company, was best qualified to testify as to quantities.

Item 6, Minneapolis & St. Louis case:

Amount allowed $357,855.00

Item 7, Rails:

Northern Pacific case: Amount allowed..... $5,645,307.73

This includes handling, inspection and transportation to central points of each section under construction.

Item 7, Great Northern case:

Amount allowed $9,053,977.00

The only material difference between the parties after allowance for rails acquired after June 30, 1907, not included in the State's estimate, is in unit prices and here allowed at $30.25 per ton at St. Paul and Duluth. The State's engineer and the engineer in the Northern Pacific case fix this price at $29.75, the former as of June 30, 1907, the latter as of June 30, 1906. Having in mind the difference in time and prices paid by the company in 1908 and the matter of handling and inspection allowed indirectly if at all by the State, $30.25 seems to be a fair average price. Transportation charges to the front is claimed for and allowed in a separate item.

Item 7, Minneapolis & St. Louis case:

Amount allowed $1,540,392.00

Item 8, Track fastenings:

Northern Pacific case: Amount allowed..... $727,228.37

This is the amount claimed by complainant. If acquisition after State's estimate was made is excluded, the amount allowed is substantially less than the State was willing to concede.

Item 8, Great Northern case:

Amount allowed $2,087,615.00

The difference in the estimates of the respective parties is $171,146.28, of which $28.800 is due to acquisition after State's
299 estimate was made. The residue is due to difference in unit prices and those of complainant are accepted as they are based on actual prices paid during the current year and there is nothing in the testimony to suggest that they are improper.

Item 8, Minneapolis & St. Louis case:

Amount allowed $258,561.00

Item 9, Switches, frogs and railroad crossings:

Northern Pacific case: Amount allowed..... $303,717.80

The difference between estimates of the respective parties is not large and for the most part arises from additions made after State's estimate was made. If Items 8 and 9 are taken together there is substantial agreement between the parties.

Item 9, Great Northern case:

Amount allowed $300,519.00

The State concedes a substantially greater amount if acquisitions after State's estimate was made are added to it.

Item 9, Minneapolis & St. Louis case:

Amount allowed $66,807.00

Item 10, Track laying and surfacing:

Northern Pacific case: Amount allowed..... $1,600,591.56

In taking the amount claimed by complainant as the amount allowed the fact is not overlooked that 439.476 miles of road is allowed for at the rate of $1,050 per mile instead of $760 per mile as in the other cases. The latter figure covers only such surfacing as is necessary for ballast and construction trains. In taking the higher figure it is not contemplated that the surfacing will be immediately followed by ballasting, but that it will leave the road in condition suitable for commercial business and that it will be followed by ballasting at some later time. A similar division of work is not found in the other cases, where it seems to be assumed that surfacing will be immediately followed by ballasting to make a completed road ready for operation.

300 Item 10, Great Northern case:

Amount allowed..... $2,207,753.00

It is difficult to reconcile the wide differences between the parties in these cases with respect to this item. As a matter of fact it is of such character that there ought not to be great disparity in unit values. In this (the Great Northern case) the State's estimate is based on a cost of $500 per mile, while complainant bases on a cost of $835 per mile, with the items entering into such cost substantially the same. For so-called contract work (that is, labor of handling material and laying track,) the State allows only $275 per mile. It appears from the records of the company (Ex. 7—Hogeland) that as long ago as 1898 in the construction of 150 miles of road in Minnesota the company actually paid $359 per mile for such work—an undertaking sufficiently extensive to be a fair criterion of value. If such was the sum necessarily paid, as the books of the company show—and they are not challenged—it would have cost much more in 1908, $400 per mile being a low estimate. Again, the State allows, in the Northern Pacific case, and presumptively

the same in this, only $28.75 for surfacing while in the work referred to in 1898 the company actually paid $142 per mile for such work. This small amount allowed by the State for surfacing was upon the theory that where track laying was to be followed as soon as practicable by ballasting little surfacing would be required. The testimony shows that even in such case it is customary and more economical to do a very considerable amount of surfacing to hold the track and ties in place for ballasting and the construction work to follow. The amount so allowed by the State seems greatly inadequate. For train service the State allows only $61.30 per mile, whereas in the work of 1898 referred to the actual cost was $114 per mile. Taking the difference in time, increased cost and other matters into consideration, it would seem that the complainant's claim in the Northern Pacific case of $760 per mile is fairly
301 conservative, and is adopted as a proper basis for this item in each of the three cases. Such allowance contemplates that there will be very considerable surfacing from the sides so as to make the road sufficiently permanent and stable for the passage of ballast and construction trains in the further prosecution of the work but not in condition for commercial traffic.

Item 10, Minneapolis & St. Louis case:

Amount allowed..... $384,751.00

It appears that the company in 1906 and 1907 did work of this character in South Dakota and amounting to 250 miles at a cost of $890 per mile, of which $130 per mile was charged as material-yard expense. Such expense does not appear in the estimates in the other cases, and if in this it is deducted from the total claimed, we have $760 per mile, just the amount allowed in those cases. Whatever may have been the conditions in South Dakota appertaining to this work there done, it does not satisfactorily appear that for the road in this state such expense would be necessary.

Item 11, Bridges, trestles and culverts:

Northern Pacific case: Amount allowed..... $3,586,053.00

Allowing for construction after State's estimate was made, there remains a difference between the parties of $896,072.21. The State bases its figures, apparently, in a large measure upon the reports made of such work by a number of other important railroad lines. Its engineer made use of these reports in making up the estimate in connection with his own very considerable knowledge and experience in such matters—and such estimate is not to be ignored. It is to be observed, however, that reports of other companies not supported by evidence as to basic facts should be received with caution. Exhibit 86—Darling—discloses the difference between the parties with respect to the items of work making up the total aggregate and actual prices paid for such items in recent years, from which it appears that the unit prices so paid are considerably higher
302 than those used by the State. Upon careful review of the whole testimony it is determined to allow to complainant on

account of this item a sum equal to two-thirds of this difference; that is, State's allowance, $2,578,014, plus new work, $410,658, plus two-thirds of $896,072 equals $3,686,053.

Item 11, Great Northern case:

Amount allowed..... $6,664,729.00

Allowing for construction after State's estimate was made and omissions from it of bridges and, seemingly, also, of foundation work, the difference between the parties is $448,589.44, and is to be accounted for by difference in unit prices. The State's prices are compared with the prices returned by a number of other important railroad lines in the state and seem to have been quite largely based upon or fixed with reference to them, as appears in the Northern Pacific case. For reasons stated in that case there is allowed to complainants two-thirds of the difference on account of this item; that is, state's allowance $5,141,781 plus new work and omitted bridges and foundations $1,223,889 plus two-thirds of $448,589 equals $6,664,729.

Item 11, Minneapolis & St. Louis case:

Amount allowed..... $1,025,827.00

The difference between the parties on this item is $354,292. Except as to three overhead bridges in Minneapolis, the chief witnesses seemed to harmonize as to quantities. It was claimed by the State that the three bridges mentioned were built by the city and for this reason no allowance was made therefor. But as they apparently form a part of street highways, as the law now is, their repair and renewal as acquired must be borne by the company and the city could not have been compelled to construct them in the first instance if the law had been properly interpreted and observed. Their reproduction cost should have been allowed at the sum of $54,580. This must be offset by an error in quantities of
303 masonry found by the State's witness, amounting, at the unit prices reported by the company, to $23,000, which leaves $31,580 to be added to the State's estimate, leaving a difference of $322,712, due apparently to unit prices. For reasons stated in the other case the benefit of two-thirds thereof is given to complainants. State's estimate $799,106 plus $31,580 plus two-thirds of $322,712 equals $1,025,827.

Items 12 to 28, inclusive, and 31 to 34, inclusive:

Northern Pacific case and Great Northern case:

As to the foregoing items in each of these two cases after allowing complainants for acquisition after State's estimates were made, it appears that the total value thereof as conceded by the State exceeds the amount claimed by the complainants who in their brief assume a substantial agreement. It is determined that in the Northern Pacific case the valuation of said items in the aggregate amounts to the sum

of $20,272,398.23 and in the Great Northern case to the sum of $28,838,580. The valuations placed on each of the items making up such aggregate valuations, respectively, by the witnesses for complainants, are found to be fair and reasonable and are made part of the summary schedule to follow. As the aggregate is less than conceded by the state it cannot complain.

Minneapolis & St. Louis case:

In this case there was little difference between the parties as to the items from 12 to 26 and the differences in these and some other items were compromised and figures taken accordingly and appear in the summary to follow. These figures so taken represent the Master's judgment of the fair value of the items respectively.

Item 30, Engineering, superintendence and legal expenses:

Northern Pacific case: Amount allowed..... $2,633,946.00

This is 4½ per cent on Item- 1 to 28, same as in Great Northern case.

304 Great Northern case: Amount allowed..... $3,867,040.00

This is obtained by taking 4½ per cent on Items 1 to 28, inclusive, and is sufficient to cover general expenses, for which a separate claim is made.

Minneapolis & St. Louis case: Amount allowed. $690,364.00

For valuation of Items 31 to 34 in this case see summary to follow.

Item 36, Freight on construction:

Northern Pacific case: In this case this item has not been kept separately but is included as a part of the cost of all items requiring such service.

Great Northern case: Amount allowed..... $1,700,043.00

The evidence clearly favors the view that this item should be allowed at regular tariff rates; that it is more economical to make use of other roads as far as possible in handling material to the front and that now full tariff rates must be paid for such service rather than the conventional five mills per ton per mile which seems to have formerly obtained. As the law now is, no favors can be extended to railroad companies or reductions made in the interest of reciprocity.

Minneapolis & St. Louis case:

This and Item 37 are to be taken in connection with Item 39 and is covered by it.

Item 37, Contingencies:

Northern Pacific case: Amount allowed..... $3,710,479.00

The amount here allowed is five per cent on Items 1 to 34 and corresponds to the State's method, and in view of present knowledge—making definite many things which would in a road projected into new territory be uncertain—the amount seems ample.

Item 37, Great Northern case:

Amount allowed..... $4,367,826.00

This amount is obtained by allowing ten per cent on all
305 items into which labor enters and eliminates items a knowledge of which has been acquired by the actual construction of road. The State's method would have somewhat increased this amount.

Item 38, Stores and supplies in Minnesota:

Northern Pacific case: Amount allowed..... $2,658,976.00

Item 38, Great Northern case:

Amount allowed..... $3,240,178.00

Item 38, Minneapolis & St. Louis case:

Amount allowed..... $238,589.00

Item 39, Interest during construction:

Northern Pacific case: Amount allowed..... $7,886,215.00

This is interest at four per cent for 2½ years on Items 1 to 36.

Item 39, Great Northern case:

Amount allowed..... $17,880,150.00

This allowance is based upon four per cent on Items 1 to 36 for a period of four years, during which time it is assumed the aggregate of such items would average the amount paid out without a return. It is fair to allow interest on payments made until as the result of such payments revenue is derived, and this is recognized by all the authorities, as well as by the State's witnesses. This is an interest allowance, however, and is not analogous to returns based on the hazards of the business, as are rates. Returns from savings banks' accounts and the better class of bonds are less than four per cent, and under all the circumstances interest at this rate seems fairly compensatory and is what is claimed and allowed in the Northern Pacific Case.

Minneapolis & St. Louis case, Items 36, 37 and 39:

Amount allowed..... $1,834,880.00

In view of testimony, ten per cent of Items from 1 to 34, inclusive.

Item 40, interest in terminal properties:

Northern Pacific case: Amount allowed..... $2,204,342.00

306 The situation of this company with respect to the St. Paul Union Depot and Minnesota Transfer companies is identical with that of the Great Northern company, to be hereafter explained.

With respect to the Duluth Union Depot and Transfer Company, the Northern Pacific Company owns all the stock and makes use of the property of the company as its own by the operation of its line of road; it is simply an operating tool and transacts no business on its own account or otherwise than as an agent of the Northern Pacific Company, and its properties should be valued as belonging to that company.

In this case it was conceded at the close of the argument before the Master that the Big Forks and International Falls Railway and the Minnesota and International Railway had not been made to appear as part of the Northern Pacific system, and they have not been included in the valuations which have been made.

Item 40, Great Northern case:

Amount allowed..... $1,186,191.00

This is the valuation of the one-tenth interest owned by the company in the Minnesota Transfer Railway and of the one-ninth interest in the St. Paul Union Depot properties. Such ownership is not direct but is evidenced by stock in subsidiary corporations in whose name the properties are carried and operated for the sole and exclusive benefit of the respective railroad companies which own the stock and make use of the properties as an operating tool and as part of the properties of their respective lines of railroad. These companies are substantially joint owners of the property and as a matter of convenience and to more readily adjust accounts as between themselves growing out of the several use by each of them as so made of it, an agency for the purposes is created by an intermediary corporation under their direct control. To such agent each pays for such use of the property and charges the amount paid in
307 its expense account, and dividends, if any, go into the revenue account as operating expenses and revenues.

These subsidiary corporations are mere agencies operated for and wholly dependent upon the railroad companies who own the stock and in no sense are they independent enterprises engaged in business on their account. In the evidence and all the proceedings before the Master it has been by all parties assumed that such was their character, and this being so the properties thereof should be considered as property of the companies to the extent of their respective interests as represented by stock.

These terminal properties, located as they are and used for receiving and discharging passengers and for receiving, handling, transferring and forwarding freight, are of exceptional value and importance and the facilities so provided are found to be fully worth the amount claimed therefor by complainants and such amount has been taken in each of the cases.

Item 40, Minneapolis & St. Louis case:

Amount allowed..... $1,186,191.00

The interest of this company in the Minnesota Transfer and St. Paul Union Depot property is apparently the same as in the other cases and is allowed for the reasons before stated.

A claim was made in the Great Northern case for lines under construction, but the evidence fails to show why they should constitute an element of rate-making value. Until they become completed roads and are made part of the system so as to produce revenue, they should not be regarded. Upon completion it will be noted that interest during construction is allowed as an element of reproduction cost, which—when it shall become entitled to recognition—will fully cover the claim so made.

308 *Summary of Valuations of Physical Properties.*
Itemized in Each of the Three Suits.
Northern Pacific Case.

Items.	
1. Lands for right of way, yards and terminals.....	$21,024,562
2. Grading, clearing and grubbing.....	1,331,541
3. Protection work, rip-rap, retaining walls.....	374,091
4. Tunnels	253,250
5. Cross-ties and switch-ties.....	3,657,576
6. Ballast	1,960,969
7. Rails	5,645,307
8. Track fastenings	727,228
9. Switches, frogs and railroad crossings.....	303,717
10. Track laying and surfacing.....	1,600,591
11. Bridges, trestles and culverts.....	3,586,063
12. Track and bridge tools.....	28,073
13. Fences, cattleguards and signs.....	471,609
14. Stockyards and appurtenances.....	37,098
15. Water stations	436,489
16. Coal stations	120,039
17. Stations, buildings and fixtures.....	920,423
18. Miscellaneous buildings	1,054,874
19. Steam and electric power plants, gas plants.....	196,338
20. General repair shops.....	1,162,934
21. Shop machinery and tools.....	529,322
22. Engine houses, turntables and cinder pits.....	1,026,346
23. Track scales	38,520
24. Docks and wharves.....	768,306
25. Interlocking plants and 26. other signal apparatus	114,430
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27. Telegraph and telephone lines.....	285,145
28½. General office furniture.....	73,654
29. Solidification of roadbed. (Absorbed in above.)	
Total 1 to 28.....	$58,728,685

30. Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$2,785,036
31. Locomotives	3,454,040
32. Passenger equipment	1,349,829
33. Freight car equipment	7,519,722
34. Miscellaneous equipment	372,477
35. Marine equipment (none).	
Total items 1 to 34	$74,209,789
36. Freight on construction material—absorbed.	
37. Contingencies, 5 per cent 1 to 34	3,710,479
38. Stores and supplies in Minnesota	2,658,976
39. Interest during construction, 4 per cent 2½ years Items 1 to 36	7,420,957
40. Interest in terminal properties, St. Paul depot, Duluth depot, Minnesota Transfer	2,204,344
	$90,204,545

Great Northern Case.

Items.	
1. Lands for right of way, yards and terminals	$25,172,650
2. Grading, clearing and grubbing	21,685,802
3. Protection work, rip-rap and retaining walls	850,069
4. Tunnels (none).	
5. Cross-ties and switch-ties	5,460,809
6. Ballast	3,861,360
7. Rails	9,053,977
310	
8. Track fastenings	2,087,615
9. Switches, frogs and railroad crossings	300,519
10. Track laying and surfacing	2,207,753
11. Bridges, trestles and culverts	6,664,729
12. Track and bridge tools	54,450
13. Fences, cattleguards and signs	448,864
14. Stockyards and appurtenances	81,600
15. Water stations	569,900
16. Coal stations	202,200
17. Station buildings and fixtures	1,561,200
18. Miscellaneous buildings	1,446,445
19. Steam and electric power plants and gas plants	413,752
20. General repair shops	1,070,765
21. Shop machinery and tools	953,531
22. Engine houses, turntables and cinder pits	727,100
23. Track scales	39,700
24. Docks and wharves	37,500
25. Interlocking plants	193,268
26. Signal apparatus	116,046
27. Telegraph lines and appurtenances	634,744
28. Telephone lines and appurtenances	37,893
29. Solidification of roadbed (Absorbed in above).	
Total 1 to 28	$85,934,241

30. Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$3,867,040
31. Locomotives	5,469,270
32. Passenger equipment	1,886,178
33. Freight car equipment	12,411,265
34. Miscellaneous equipment	482,909
35. Marine equipment (none).	
Total 1 to 34	$110,050,903
311	
36. Freight on construction material	1,700,043
	$111,750,946
37. Contingencies	4,367,826
38. Stores and supplies in Minnesota	3,240,178
39. Interest during construction (4 per cent four years 1 to 36)	17,880,150
40. Interest in terminal properties	1,186,191
	$138,425,291

Minneapolis & St. Louis Case.

Items.	
1. Lands for right of way, yards and terminals	$5,999,397
2. Grading, clearing and grubbing	2,551,960
3. Protection work, rip-rap, retaining walls	52,240
4. Tunnels (none).	
5. Cross-ties and switch-ties	1,149,829
6. Ballast	357,855
7. Rails	1,540,392
8. Track fastenings	258,561
9. Switches, frogs and railroad crossings	66,807
10. Tracklaying and surfacing	384,751
11. Bridges, trestles and culverts	1,025,827
12. Track and bridge tools	27,791
13. Fences, cattleguards and signs	141,606
14. Stockyards and appurtenances	55,704
15. Water stations	80,637
16. Coal stations	25,682
17. Station buildings and fixtures	239,434
18. Miscellaneous buildings	32,901
19. Steam, electric power and gas plants	58,050
20. General repair shops	180,588
21. Shop machinery and tools	101,875
312	
22. Engine houses, turntables and cinder pits	148,303
23. Track scales	8,421
24. Docks and wharves (none).	
25. Interlocking plants	15,674

26. Signal apparatus	2,594
27. Telegraph lines and appurtenances	27,109
28. Telephone lines and appurtenances (none).	
29. Solidification of roadbed (Absorbed in above).	
Total items 1 to 28	$14,533,988
30. Engineering, superintendence and legal expenses 4¾ per cent 1 to 28	$690,364
31. Locomotives	698,163
32. Passenger equipment	341,006
33. Freight car equipment	1,998,345
34. Miscellaneous equipment	86,938
35. Marine equipment (none).	
Total Items 1 to 34	$18,348,804
36. (Included in Item 39.)	
37. (Included in Item 39.)	
38. Stores and supplies	238,589
39. Freight on construction material, contingencies, interest during con-truction	1,834,880
40. Interest in terminal properties	1,186,191
	$21,608,464

VIII.

Depreciation.

Having thus found the cost of reproduction new of these several railroads properties, the question remains what if anything shall be deducted for depreciation.

It is established that the roadbed is constantly increasing
313 in value. It becomes solidified, embankments and slopes of excavations become settled and stable and so the better resist effects of rains and frost. It becomes adjusted to surface drainage and the adjustment is made permanent by concrete structures and rip-rap, and in other ways a roadbed long in use is far more valuable than one newly constructed On the other hand, everything on and above the roadbed depreciates from wear and weather-stress. The life of a tie is from eight to ten years only. Structures become antiquated, inadequate and more or less dilapidated. Ballast requires renewal, tools and machinery wear out, cars, locomotives and equipment, as time goes on, are worn out or discarded for newer types. A large part of the depreciation, however, is taken care of by constant repairs, renewals, additions and replacements, a sufficient sum being annually set aside and devoted to this purpose, so that this, with application of roadbed and adaptation to the needs of the country and of the public served, together with working capital hereinafter mentioned fully offsets all depreciation and renders the physical properties of the road not less valuable than their cost of reproduction

new. This conclusion is fully supported by the evidence and also justifies the language hereinbefore cited from the Missouri, Kansas & Texas Railway case, decided by Mr. Justice Hook.

There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making.

In view of all the foregoing considerations it follows without question that there should be no deductions on account of depreciation.

314 IX.

Stocks and Bonds as Affecting Value.

There was produced before the Master reliable evidence as to the average market value of the stocks and bonds issued by the Northern Pacific Company for a period of five years ending April 30, 1908, and then outstanding, such average value amounting in the aggregate to the sum of $509,824,723. (Exhibit 17—Gray.) The par value April 30, 1908, of the stock was $215,539,634.99 and of the bonds, $190,256,577.66. Total $405,796,392.65. (Exhibit 14—Gray.)

The total track mileage claimed by Complainant's Exhibit 2—Darling—is 8,146.45 miles. From this must be deducted 150.65 miles for the Minnesota and International line and Big Forks & International Falls line, improperly included, and also lines in Manitoba under lease and not operated as part of the system, amounting approximately to 300 miles, the exact amount not being definitely shown by the evidence. This leaves 7,695.80 miles. The track mileage in Minnesota is 1,625.20 or substantially 21 per cent of the whole. Taking this per cent of the stock and bond average market valuation for said five year period gives $107,063,191, which considerably exceeds the cost of reproduction new, but it must be noted that the value of stock is based on all the assets of the company and is not limited to value of property to public service, and its balance-sheet for the whole system of April 30, 1908 (Exhibit CC—Gray), shows a clear surplus $52,900,073, while some of its assets, notably the Northwestern Improvement Company stock, is apparently of far greater value than as listed. Assets and property not devoted to public service have not been valued, and as they are a large element in stock valuation it follows that value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property or as a basis rate-making.

315 In the Great Northern case, the average market value of stocks and bonds for five years ending June 30, 1908, was shown to be $452,363,804. (Exhibit 67—Drew), par value

$263,078,242.42 of average amount outstanding. The mileage in Minnesota is about 32.59 per cent of the total mileage, so that of this stock and bond average market valuation for said five year period the amount to be assigned to Minnesota on a track-mileage basis would be $147,425,363. Of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage.

At time suit was brought in the Great Northern Case the par value of stock was $149,577,500 and of bonds was $83,119,939. June 30th, 1908, par value of stock was $209,962,750 and of bonds was $97,955,939.39; total $307,918,689.39. (Ex. 54—Parker.)

In the Minneapolis & St. Louis case, the par value of stocks and bonds in 1908 was shown to be $30,011,800. The market value of stocks and bonds in 1908 was shown to be $22,006,197, (Exhibit 6 and 7—Scott), which, apportioned on basis of mileage owned by the company, of which about sixty per cent is in Minnesota, gives a valuation assignable to the State of $13,203,718, or about one-fifth less than the value of property as conceded by the State within Minnesota and thirty per cent less than its value as found by the Master on the reproduction basis.

Stock valuations are subject to great fluctuation from causes wholly foreign to the intrinsic values of properties to be taken as a basis of rate-making and have little commercial stability. It is impossible to determine with any degree of certainty the particular elements which from time to time cause such fluctuations and determine the market value of such stocks and to separate the same from the value of properties devoted to public use and decide what proportions thereof shall be assigned to each. Prof. Henry C. Adams, statistician of the Interstate Commerce Commission, has this
316 to say in respect to stock valuations:

"This is no place to enter upon a discussion of the nature and classification of different kinds of value, but a word of caution may be allowed in order to guard against an unwarranted use of the figures here submitted. The commercial valuation of railroad property, in so far as it depends on income arising from the sale of transportation, is the result, among other things, of an established schedule of freight and passenger rates, from which it follows that such a valuation cannot be used for determining the reasonableness or unreasonableness of the rates in question. The solution of the rate problem demands a separate valuation of the physical property."

Valuation of properties for purpose of taxation would include all the properties of the corporation whether devoted to the public service or not, and in such case the market value of stocks and bonds issued by it would be an important element of value.

X.

Original Cost of Construction.

In the Northern Pacific, the Great Northern and Minneapolis & St. Louis cases a large amount of evidence was produced before the Master for the purpose of showing actual cost of construction of the

entire railroad systems from the organization of the original companies and by them and by their successors, the present companies, down to April 30, 1908. This could be shown only by the books and records of the two companies, the Northern Pacific and Great Northern, and in the early history of the original companies these are somewhat obscure and uncertain and, by reason of lapse of time, cannot be verified by other proof.

The investment cost, in the Northern Pacific case, amounts to the sum of $369,252,755. In this aggregate is included an item
317 of interest during construction amounting to $4,534,882, which is a proper credit, for reasons before stated.

There is also included items aggregating $24,709,164 for discounts made and commissions paid in disposing of its bonds. This, of course, was a necessary and proper expense of the company, and if required to render an accounting it would be entitled to take credit therefor, just as it would be allowed in an accounting demanded with respect to any other business in which any corporation or private person might be engaged. It cannot be said, however, that it is money which has actually gone into the road, but rather an expense which the company incurs for the purpose of procuring such money. If rate-making is to be based upon actual cost, it would seem that such cost must be measured by the money necessarily expended in producing the construction without regard to whether those undertaking the enterprise have the same or must borrow for the purpose—a matter in which the public has no concern. If allowed interest during construction on the money invested, more should not be asked; otherwise, the rate would be directly affected by the good credit or otherwise of those undertaking the work. It seems that formerly and down to 1907 the Interstate Commerce Commission permitted a credit for this item of discount but now disallow it.

The total investment of $369,252,755 above mentioned also includes an item of $32,573,036, the basis of which is an item found in an old ledger and noted in Exhibit 28—Gray as "Claims of old stockholders recognized in reorganization representing net cost in issue of new stock less proceeds of lands, $32,573,036.16," and for which stock was issued and credit taken therefor. It seems probable that this stock was issued without consideration, and the fact that it was never included in the annual reports to the State, as shown in Ex-
hibit V, tends to discredit it, and as there is no supporting
318 evidence it should be disallowed. With these deductions, the cost of construction account is reduced to $312,243,555.

The Minnesota track mileage, as before stated, is substantially 21 per cent of the track mileage of the whole system and if the above cost were proportioned accordingly the amount assignable to the State is 21 per cent of $312,243,555, or a total sum of $65,571,462. This is considerably less than the valuation of the physical properties as found and makes no allowance for appreciation of property incident to the growth or prosperity of the country in which the company is entitled to share.

In the Great Northern case, the balance-sheet of the company of date June 30, 1908, shows the book valuation of property for the

entire system devoted to the public service to amount to the sum of $319,681,815.

Upon production of their books and examination made thereof by the State's accountants this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance of the following items: First, when in 1879 this company's immediate predecessor, the St. Paul, Minneapolis & Manitoba Railway Company, took over the properties from the latter's predecessor, the St. Paul & Pacific Railroad Company, it seems to have arbitrarily increased the book valuation by $12,126,342. Not unlikely this includes cost of reorganization, taking over from the receiver a bankrupt road and putting it on its feet again under able and efficient management, but for such purpose the amount seems excessive. It may also include enhanced value attaching to property as a going concern under such management. There is no evidence in explanation.

Second, discount on sale of bonds, disallowed for reasons before stated, $4,794,867.

Third, difference between cost to the company of the stock of the Willmar & Sioux Falls Railway Company and its par value of $1,500,000, it being included at the latter sum in its investment account, $831,275.

319 Fourth, actual cost of construction of the Willmar & Sioux Falls railroad was less than as included in investment account by $55,950.

Fifth, in the matter of the Eastern Railroad of Minnesota the book valuation or cost exceeds the actual cost of acquisition of Superior terminals and stock of Lake Superior, Terminal & Transit Company and of acquisition of the Duluth, Mississippi & Northern Railroad in the sum of $4,961,426.

Sixth, the book valuation or cost of stock of Duluth, Watertown & Pacific railroad exceeds the actual cost to the company in the sum of $724,161.

Seventh, the excess of book value over actual cost of Wadena & Park Rapids line, the Alton & Halstead line and the Red Lake Falls line amounts to $286,581.

Eighth, book valuation of Minneapolis Union Railway line when taken over was arbitrarily increased in the sum of $500,000.

Total book valuation, as before stated, $319,681,815; total of deductions as above, $24,280,602; balance, $295,401,213.

In explanation of some of the foregoing deductions it is to be kept in mind that as to acquired roads the question is not what it cost the company to take them over but what money has actually gone into their construction.

The total track mileage of the road's entire system is 8,528.98 miles, and of the part in Minnesota 2,779.30 miles, so that practically 32.59 per cent is in this state, and taking this per cent of $295,401,213 we have $96,271,255 as the book value of what has actually been expended in construction and equipment of the road in Minnesota. Of course division on a mileage basis is for the most part arbitrary and unreliable.

In the Minneapolis & St. Louis case, the book cost of property and investments amounted to $30,572,619. Deducting for discounts

disallowed for reasons before stated leaves a remainder of $28,574,-
225. Dividing this on a mileage basis 59.94 per cent, assigns
320 to Minnesota $17,127,390, and apportioned on a gross revenue
basis over the entire system, 77.41 per cent assigns to Min-
nesota $22,119,307.

For reasons before stated, rates are not to be predicated on original investment. Prof. B. H. Meyer, of the Wisconsin University, an eminent railroad statistician who has given the matter very careful consideration, as appears from the so-called Wisconsin Buel rate case, in which he wrote the decision of the commission, says:

"Bearing in mind, however, that this is a commercial valuation, it is impossible to advance a single valid argument in favor of the acceptance of cost accounts as the equivalents of values. It would be nearer the truth to say that costs of railway properties have nothing to do with their values than to assert that the values of railway properties are identical with costs."

And again,

"The method which satisfies in the highest degree the requirements of the valuation of railway systems as a whole as well as the distribution of the total values of such systems among states is the inventory method. This is a composite method, each constituent element in which is designed to solve one phase of the general problem of valuation and value distribution. The basal principle of the method is an engineer's estimate of the cost of reproduction of all physical properties new and in present condition, the latter being usually expressed in terms of per cent of the former."

Again he has said,

"The cost-of-reproduction method carries with it a greater degree of demonstratable certainty and conviction than all the others which have been proposed."

And again,

"Value of a railroad property, ascertained by the stock-and-bond method alone, cannot be used with fairness to carriers in cases involving important reductions in their rates."

321 The Minnesota Railroad & Warehouse Commission in its report to the legislature which resulted in authority to incur the expense necessary to obtain the inventory appraisement made by it sets out very forcibly the value of such appraisement as an element of rate-making. It says:

"It is uniformly held that the cost of reproduction is one of the very important elements in determining what is a reasonable rate and certainly is the strongest kind of evidence of the fair value of the property. The Commission has always recognized the carrier's right to earn a reasonable return on a fair valuation of its property, and has always had this in mind in every rate adjustment it has made. The valuation will be of great value in sustaining the Commission and the legislature in pending legislation should the contention be made that the rates in controversy will not produce a fair return on the property used, and it can be used in any further readjustment of rates that the Commission may deem it advisable or necessary to make."

The Master is thus confirmed in his opinion that the cost of reproduction new is the fairest and most equitable basis upon which to predicate rates, both for the carrier and the public, and he has accordingly adopted it in these cases.

Good will and corporate franchises are not proper elements of such valuation. Patronage and good will of the public are its contributions to the success of the enterprise, for which it is not to be assessed. Corporate franchises are the free gift of the government conferred upon any organization willing to embark in such undertaking, but knowledge derived from experience, adaptation to the needs of the public and readiness to serve, together with physical appreciation of roadbed and a reasonable amount of working capital always on hand for immediate use, are matters of value which will fully offset depreciation arising from use and weather-stress.

322

XI.

Roads Constructed and Maintained Pursuant to Public Demand.

It is true of these lines of railway that they are efficiently, economically and honestly managed; that they have been located and constructed pursuant to a public demand and that the public rather than dispense with the service of any of them can well afford and will gladly pay such rates as will produce a full and fair return on cost of their reproduction—such return as others engaged in business of similar character and of like hazards and uncertainties are accustomed to receive, and rates sufficiently high for such purpose would not be burdensome, unjust or unreasonable.

Abandonment of either of these roads would be a great public calamity, and if we could conceive of their being suddenly obliterated, their immediate reconstruction would follow in response to the public necessity, which shows that they must be worth what it would cost to reproduce them and that a return based on such cost will not be oppressive.

It is to be observed, however, that there is a marked difference in some respects between the location and surrounding conditions of the Northern Pacific and Great Northern roads, on the one hand, and the Minneapolis & St. Louis road, on the other. The former lines extend from the Head of the Lakes at Duluth and Superior and from the great commercial cities of St. Paul and Minneapolis to important seaboard cities on the Pacific coast and throughout their length, both within and beyond the state of Minnesota, connect with other important lines of railroad and exchange traffic therewith in large volume, and also have many and important branch lines reaching out into productive agricultural lands which operate as feeders and largely increase the business of the main lines. Their terminals at the Head of the Great Lakes and at the Pacific coast bring
323 about the exchange of a large tonnage with vessels navigating those waters, both domestic and foreign, and add largely to the volume of business.

The Minneapolis & St. Louis road, on the other hand, however, is so located that it cannot participate in these advantages and must

largely depend on local and inland traffic for its business. It runs south from the inland cities of St. Paul and Minneapolis to Des Moines, with a branch to Storm Lake, Iowa, and a branch to the South Dakota grain fields. Along its entire line it comes in sharp competition with strong intersecting railroad lines, and, while as before stated, it subserves a useful public purpose and is operated in response to public demand, it can be maintained only by the exercise of the highest economy and watchfulness in its operation and to succeed must be given greater latitude than is necessary with respect to the more favorably located and prosperous lines of railway. Necessarily, to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business, as will later be made to appear when the consideration of rates is reached.

XII.

Economy of Management.

It has been urged before the Master with reference to the lines of railway under consideration that the evidence discloses want of economical management in that limited portions of the business were unremunerative and not infrequently resulted in loss.

If the convenience and demands of the public were disregarded, greater economy could doubtless be exercised. Full cars and long trains at fewer intervals would be a great saving of cost, and
324 to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say that this would result in great public inconvenience and dissatisfaction, and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business.

It is also urged that as to some of the roads surplus lands and equipment are disclosed much beyond present needs. But it is good business sense to anticipate and prepare for the requirements of the near future. Readiness to serve is of the highest importance to those requiring service and an efficient management will, if practicable, take advantage of the markets and buy what will soon be needed when it can be obtained at a reasonable price and not wait until it must be had regardless of cost. Present patrons are not to be burdened for the benefit of those to be acquired in the distant future, but they can well afford to pay a somewhat higher rate that they themselves in the near future may enjoy a cheaper and better service. It is proper for the carrier not only to provide itself with ample facilities for the efficient conduct of its present business, but also to anticipate demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and

prospective needs are unreasonable or excessive or that any property has been improperly included as a basis of cost of reproduction for rate-making purposes.

XIII.

Valuations of Entire System.

Complainants have offered considerable testimony for the purpose of establishing value of the physical properties of the whole system, both in the Northern Pacific and Great Northern cases, and they ask a finding of such valuation.

325 The State has confined its testimony as to value of such physical properties only as are in Minnesota. The Master does not consider a finding in the matter at all necessary in determining the controversies submitted to him, but as such finding is desired by complainants he concludes to make it.

In the Northern Pacific case there was testimony to the effect that the cost of reproduction of the physical properties of the entire system would amount to the sum of $526,779,016. This includes $28,913,981 for the Spokane, Portland & Seattle road, one-half of which is owned by the Northern Pacific Company and one-half by the Great Northern Company, the amount so taken being one-half of such cost. This road was, at the time evidence was submitted, under construction, did no commercial business, earned no revenue, and until completion could form no part of the operating system. When completed its cost of reproduction will be enhanced by interest during construction and until then it forms no part of rate-making valuation. It is not included in the track mileage of the system hereinbefore found to amount to 7,695.80 miles.

There is also included in complainants' estimate the further sum of $4,116,874 for the Minnesota and International and the Big Forks and International roads which, for reasons before given, must be deducted.

There has also been so included the further sum of $7,000,000 for lines in Manitoba which are under leases and form no part of the company's operating system.

Eliminating these items leaves a balance of $486,738,161.

Assuming, as we may, that there should be at least the same per cent reduction for the whole system as it has been found necessary to make in Minnesota (which after deducting as here for the Minnesota & International and the Big Forks & International Falls lines was substantially seven per cent), the valuation amounts to $452,666,489, and upon the testimony produced the cost of reproduction is found to amount to this sum.

326 In the Great Northern case, there was testimony to the effect that cost of reproduction for the entire system would amount to $549,253,317. Deducting for its interest in the Spokane, Portland & Seattle line $21,827,521 and for lines under construction $8,219,581 leaves a balance of $519,206,215.

Assuming, as in the Northern Pacific case, that there should be the same per cent of reduction for the whole system as it has been necessary to make in Minnesota, and which is substantially 12 per cent, the

valuation amounts to the sum of $457,121,469, and upon the testimony before the Master the cost of reproduction of the whole system is found to amount to this sum.

XIV.

Division of Property Valuation Between Freight and Passenger Business, State and Interstate.

A common use in general is made of the property devoted to the public service for both the freight and passenger business, both state and interstate, respectively, and in making a statement with reference to each class so as to determine revenue with respect to cost, there must be a division of property valuation on some fair basis and an assignment to each of its proper proportion, so that each may carry its proper share of property expense.

It is inequitable that the traveling public, largely on pleasure bent, should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equal basis as near as may be.

327 Furthermore, to determine what net revenue is derived from intrastate business and the per cent of return upon property used in that class of business, it becomes necessary to make a subdivision of property values and determine what part thereof should be assigned to state and to interstate business, respectively. The revenues from each class of business within and properly assignable to the state are known and the amount thereof and the separation as between states accepted by both parties and are practically free from estimated approximations.

Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest, all things considered, in all rate cases heretofore judicially determined. While a division of property valuation on the relation of cost has been suggested by defendants, it was practically conceded to be as open to criticism as that made on the basis of revenue. Relative cost as hereafter found is at best a rough and unsatisfactory approximation, necessarily inaccurate, and should not be accepted as a divisional basis if it can be avoided. The revenue basis is not ideal, but it has an element of certainty possessed by no other and is not more objectionable in other respects.

There is no controversy between the parties in the Northern Pacific and the Minneapolis & St. Louis cases as to the total revenue and the part thereof assignable to state and interstate business respectively. In the Great Northern case there is some difference in this respect between the parties, bt if the claim of defendants was allowed, it would not in any manner alter the judgment herein recommended to be entered.

A division of total value between freight business and passenger business, state and interstate, on the gross earnings basis in each of the three cases may be stated as follows:

328 Northern Pacific Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Northern Pacific Company, used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $90,204,545.

Such total value may justly and fairly be apportioned between freight business and passenger business on the basis of gross earnings,—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year $13,336,046.87.

Gross earnings freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.) $9,823,508.35 equals 73.661 per cent of total.

Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.) $3,512,538.52 equals 26.339 per cent of total.

73.661 per cent of total value ($90,204,545) assigns $66,445,570 to the freight business, and 26.339 per cent of total value assigns $23,758,975 to the passenger business.

Division of Value Apportioned to Freight Business, Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $9,823,508.35, of which $1,606,771.26, or 16.356 per cent thereof, was intrastate, and $8,216,737.09, or 83.644 per cent, was interstate.

329 16.356 per cent of total value apportioned to freight business ($66,445,570) assigns $10,867,837 to the intrastate freight business, and 83.644 per cent of such total value apportioned to the freight business assigns $55,577,733 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $3,512,538.52, of which $1,206,333.09, or 34.344 per cent thereof, was intrastate and $2,306,205.43, or 65.656 per cent thereof, was interstate.

34.344 per cent of the total value apportioned to the passenger business ($23,758,975) assigns $8,159,782 to the intrastate passenger business, and 65.656 per cent of such total amount apportioned to the passenger business assigns $15,599,193 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1908		$90,204,545
Total value apportioned to freight business, 73.661 per cent, or	$66,445,570	
Total value apportioned to passenger business, 26.339 per cent, or	23,758,975	
Total		$90,204,545
(Equals 100 per cent.)		
330 Assign to intrastate freight business 16.356 per cent of total value apportioned to freight business		$10,867,837
Assign to interstate freight business 83.644 per cent of total value apportioned to freight business		55,577,733
Assign to intrastate passenger business in Minnesota 34.344 per cent of the total value assigned to passenger business		8,159,782
Assign to interstate passenger business in Minnesota 65.656 per cent of total value assigned to passenger business in Minnesota		15,599,193
Total		$90,204,545

Great Northern Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Great Northern Company used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $138,425,291.

Such total value may be justly and fairly apportioned between freight and passenger business on the basis of gross earnings—that is, assign to each such percentage of total value as the amount of gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year	$20,275,907.75
Gross earnings, freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.)	15,936,998.85
(Equals 78.6 per cent.)	

331 Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.) 4,338,908.90
Equals 21.4 per cent.

(See Ex. 30, Parker, 49 Martin and 53 Ward.)

78.6 per cent of total value ($138,425,291) assigns $108,802,279 to the freight business, and 21.4 per cent of total value assigns $29,623,012 to the passenger business.

Division of Value Apportioned to Freight Business Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $15,936,998.85, of which $2,408,421.43, or 15.112 per cent thereof, was intrastate, and $13,528,577.42, or 84.888 per cent thereof, was interstate.

15.112 per cent of total value apportioned to freight business ($108,802,279) assigns $16,442,200 to the intrastate freight business, and 84.888 per cent of such total value apportioned to the freight business assigns $92,360,079 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $4,338,908.90, of which $2,086,276.68, or 48.083 per cent thereof, was intrastate, and $2,252,632.22, or 51.917 per cent thereof, was interstate.

48.083 per cent of the total value apportioned to the passenger business ($29,623,012) assigns $14,243,633 to the intrastate passenger business, and 51.917 per cent of such total amount ap-
332 portioned to the passenger business assigns $15,379,379 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business.

Total value of property used in transportation business in Minnesota for the fiscal year ending June 30, 1908	$138,425,291
Total value apportioned to freight business 78.6 per cent or	108,802,279
Total value apportioned to passenger business, 21.4 per cent or	29,623,012
Total, 100 per cent	$138,425,291
Assign to intrastate freight business 15.112 per cent of total value apportioned to freight business	$16,442,200
Assign to interstate freight business 84.888 per cent of total value apportioned to freight business	92,360,079

Assign to intrastate passenger business in Minnesota 48,083 per cent of the total value assigned to passenger business	14,243,633
Assign to interstate passenger business in Minnesota 51.917 per cent of total value assigned to passenger business in Minnesota	15,379,379
	$138,425,291

Minneapolis & St. Louis Case.

For this case see infra XVII, p. 127, where it is considered separately.

333 XV.

Reasonable Return.

Having made the foregoing distribution of property valuations, the question is, What return are the companies respectively entitled to receive thereon without legislative interference for the protection of the public?

It has been found that a full and fair return, such as is derived from investments in like kinds of business and subject to like conditions, would not compel the public served to pay an unjust or burdensome rate. It follows, therefore, that such valuation is as much an element of rate-making and is entitled to the same consideration as are the operating expenses of the company. The theory that it is entitled to some return, the amount thereof to be adjusted by the legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and fair return is unreasonable, and is confiscatory to the extent that it comes short of producing such return, and is a taking of property from the carrier class and giving it to the persons served without compensation.

What is a just return? One of the most fair-minded and intelligent witnesses before the Master; one who from his long official experience and efficient service had necessarily given the matter very careful consideration, was of the opinion that the carrier should be assured an average annual return of seven per cent on a fair valuation of its property. The Master concurs in this view. Having in mind the nature of the business, its fluctuations from year to year due to extremes of weather and varying crop conditions, the fact that operations can never be suspended, but in time of adversity as well as of prosperity the carrier must be ready to serve or forfeit its property devoted to the public service, and that competition is ever present and increasing, it would seem that the return here
334 suggested would be the minimum when compared with returns from other kinds of business not subject to such conditions. It must be remembered also that the public demands and is able and willing to pay for a service of the highest efficiency, requiring able and skillful management. The continued prosperity of the country depends upon it, and the returns from such undertakings should be sufficiently adequate to encourage the investment of ample capital for their successful prosecution.

In Wilcox v. Consolidated Gas Co., 212 U. S. 19, the question as to the reasonableness of the rates prescribed by the state of New York for the defendant company within the city of New York was before the Court for its determination. After making some general observations as to what compensation public service corporations would, under varying conditions, be entitled to receive, the Court uses the following language:

"In an investment in a gas company, such as complainant's, the risk is reduced almost to a minimum. It is a corporation, which in fact, as the court below remarks, monopolizes the gas service of the largest city in America, and is secure against competition under the circumstances in which it is placed, because it is a proposition almost unthinkable that the city of New York would, for purposes of making competition, permit the streets of the city to be again torn up in order to allow the mains of another company to be laid all through them to supply gas which the present company can adequately supply. And, so far as it is given us to look into the future, it seems as certain as anything of such a nature can be, that the demand for gas will increase, and, at the reduced price, increase to a considerable extent. An interest in such a business is as near a safe and secure investment as can be imagined with regard to any private manufacturing business, although it is recognized at the same time that there is a possible element of risk, even in such a business. The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently sub-
335 ject to many of the vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of six per cent would be enough to avoid the charge of confiscation, and for the reason that a return of such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

"Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to six per cent on the fair value of its property devoted to the public use."

If a gas company under the conditions there disclosed, with an assured revenue beyond all reasonable probability of hazard, was entitled to six per cent net return on the value of its property devoted to the public use, a finding that in these cases the companies are entitled to seven per cent net return on such valuation after allowing for all necessary repairs and replacements is certainly conservative and does no injustice to the public. Few businesses are so free from hazard as that of national banks, and the evidence discloses that the average results of their business for thirty-eight years ending with 1907 show net annual earnings to capital and surplus of 8.58 per cent, and for the period from March 1, 1897, to June 30, 1907, of 9.84 per cent.

The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found.

XVI.

Net Revenue Derived from Freight and Passenger Business, Respectively.

It now becomes necessary to determine the net revenue derived from the passenger and freight business, respectivly, within the State of Minnesota, and to do so we must ascertain the cost in each
336 class. It has been hereinbefore determined what the gross revenue derived from each class of business and apportioned to the state is, and there is no substantial controversy as to the gross aggregate cost incurred in conducting both classes of business taken as a whole, nor as to the apportionment thereof to the state.

Because of the fact that there is a common use of the property in conducting each class of business, it is impossible to apportion to each with any degree of accuracy its proper proportion of cost so that neither shall be unduly burdened, and as to this matter the parties are far apart, both as to results and as to methods in obtaining them, in both the Northern Pacific and Great Northern cases.

In the two cases last above mentioned, the allocations of cost made by the companies respectively have been accepted by both parties. That is to say, each company has assigned to the passenger business all those items of cost directly incurred in conducting that class of business and not common to both classes, and has assigned to the freight business all those items of cost directly incurred in conducting that class of business and not common to both classes, which assignments are accepted by both parties, and the items thereof are called allocated items and cover about sixty per cent of all expenses. The remaining items of cost not so allocated and which are common to and are incurred in conducting both freight and passenger business, are not capable of separation and assignment to each class except upon some more or less arbitrary basis, and approximations only are attainable. Such items by both companies have, in general, been divided and assigned to passenger and to freight business, respectively, upon the relation, as to most of them, which the revenue train-miles in the one class of business bears to the revenue train-miles in the other class of business, and to the items not so divided, upon the relation which the revenue engine-miles in the one
337 class bears to the revenue engine-miles in the other, and this division and assignment has been accepted by the complainants and they have offered much testimony in support thereof in these two cases.

The division so made of such common items of cost between freight and passenger for the year ending June 30, 1908, in the Northern Pacific case is found in Ex. 79—Elliott, and the method pursued is fully explained by the assistant comptroller, Johnson, in his testimony found in Vol. 6, at pages 3249, et seq., of the printed Record in that case. A like division in the Great Northern case is found in Ex. 47—Martin, with explanations by the assistant comptroller, Martin, of the method pursued, in Vol. 2, at page 955 of the printed Record in that case. The method is the same in both cases and is the one now, and which for many years last past has been, in general

use upon all the leading railroads of the country when any attempt at such division is made, constituting, in mileage at least, about one-third of all the lines of railway in the United States. A division of this character was at one time required by the Interstate Commerce Commission, and the foregoing method was the one prescribed for the purpose. Such requirement was subsequently withdrawn and such division of cost between freight and passenger seems to have been quite generally abandoned, but many companies, for their own use and information, continue to make such division according to this method, which would seem to have been the outgrowth of practical observation and experience in the exercise of an honest judgment. When it was originally adopted, there was no apparent reason, from interest or otherwise, for unduly burdening either class of business with more than its proper share of common expense. Its use is approved and supported by the evidence of a number of witnesses having an intimate knowledge and large experience in the practical operation of railway transportation in all its details.

The method of division presented by the evidence on be-
338 half of defendants is one devised by their accountant, Mr. C. W. Hillman, and may be styled the Hillman method. There is no difference between the parties in the division of train movement items, being items from 10 to 27 in the schedule of items used by them. The difference arises with respect to the rest of the items contained in such schedule, and they are for the most part divided by Mr. Hillman, item by item, in accordance with his individual judgment and opinion as to the propriety of such division. No other witness was called in support of his method of division, nor does it appear that his experience was such in the practical operation of a railway as to specially qualify him for the work. He is certainly an able accountant and statistician, but could not be classed as a practical operating man. It seems to the Master that the weight of evidence fails to sustain his method. In the Northern Pacific case, for the fiscal year ending June 30, 1907, it results in taking something over $400,000 from the passenger and adding it to the freight expense, and in the Great Northern case, for the fiscal year ending June 30, 1908, it in like manner affects the relation of passenger to freight expense in the sum of $933,694. Manifestly no one else, proceeding along the same lines that Hillman did but exercising his own individual judgment as to what, with respect to each item, was a proper division, would have reached the same results obtained by Hillman, except as a mere coincidence. It was conceded that the method could be made to produce any result desired by the person making use of it unless every step taken by its author, varying from time to time according to conditions, were strictly followed.

If the views of the Master as to what is a reasonable rate of return, and his valuations, are accepted and approved, the Hillman method, both as to division of freight and passenger, and his methods of determining the per cent of return on state business, would not, if
adopted, change the decree to be entered, either in form or
339 substance. It would, however, make a wide spread between the per cent of return from each class of business, so wide as to itself suggest that the division made by him was an improper one,

greatly favoring, as it does, the net revenue from passenger business. The Master determines that the method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to the traffic on their respective roads most nearly approximates an accurate result, and the same is adopted for the purpose of division in the Northern Pacific and Great Northern cases.

In the Minneapolis & St. Louis case a division of cost between freight and passenger business was made by the company upon a combination of train, car and engine-mileage, with results so close to those produced by the Hillman method that they were accepted by the defendants.

The results of divisions of cost between freight and passenger and resulting net revenue in this case will appear later in this report.

XVII.

Net Return from Intrastate Passenger and Freight Business on Property Valuations Assigned to Each Respectively.

Northern Pacific Case.

Great Northern Case.

In the two cases mentioned in the caption of this subdivision we now have the following definitely ascertained elements for determining net return in the two classes of business, viz.:

1st. Gross revenue from state and interstate business, both freight and passenger, respectively, separately stated;

2nd. Relation of revenue per ton per mile and per passenger per mile, respectively, state to interstate;

340 3rd. Gross cost of operation, covering and being an aggregation of cost of state and interstate business, freight and passenger;

4th. The division of cost between the freight and passenger business as herein found and determined.

The element not certainly known and which must be ascertained and determined from the evidence is the relation of cost, state to interstate, in each class of business, freight and passenger. This found as to passenger-miles and ton-miles respectively, and the problem of determining the net revenue from each class can be readily solved.

It is needless here to recount the difficulties this problem presents, growing out of the common use of the same property in contemporaneously conducting both state and interstate transportation. They have been often recited with much particularity in railway rate decisions and are again fully described by experienced railway officials and employés called as witnesses in these cases, and their testimony more than justifies a sug-estion made by Judge Van Devanter in response to some inquiry of counsel when orally delivering his opinion in St. Louis & C. R. Co. v. Allen, in the course of which he made use of the follow- language, viz:

"Taking as your premise that the authority of Congress is supreme and therefore in respect of interstate commerce its authority shall be

everywhere equally dominant, I am not sure but that the result would be in some instances where there is such confusion, such an interweaving, as that there could not be a separation, that there the power of Congress would be the dominant power and that the other power would not exist; not on the theory that Congress has any authority over state rates, but that since its authority over interstate commerce must reach in every part and parcel of it, Congress must say that anything that gets interwoven with it must partake
341 of the exercise of that authority. Otherwise the power of Congress, which is supreme, would not be supreme."

It is conceded by all that there is practically no difference in cost arising from the fact that a transportation is across a state line and not wholly within the state, and there is no dispute but that a substantial difference exists in the cost of doing the short-haul and the long-haul business. This is clearly evidenced, in the freight business, by all rate tariffs, including the schedules of rates prescribed by the Commission's orders and the Commodity Rate Act which gave rise to these suits. The orders covering merchandise rates make the hauling charge for the first two hundred miles twice as large as for the second two hundred miles, and four times as large as for distances beyond the four-hundred-mile point, and a similar relation exists in the legislative commodity rates. There is, of course, some state traffic having a reasonably long haul and some interstate traffic having a short haul, but by far the greater volume of state business belongs to the more expensive short-haul class, and in the interstate business by far the greater part thereof belongs to the less expensive long-haul class. This is established by the fact that in the Northern Pacific case, for the year ending June 30, 1908, as the evidence shows, there were 960,709,494 ton-miles of interstate traffic touching Minnesota, with an average haul of 485.3 miles as against 130,580,988 ton-miles of state traffic with an average haul of only 104.52 miles. (Ex. 80—Elliott.)

In the Great Northern case, for the year ending June 30, 1908, the evidence shows 1,952,426,967 ton-miles of interstate traffic touching Minnesota, with an average haul of 411.8 miles, as against 171,317,766 ton-miles of state traffic with an average haul of only 113.3 miles. (Ex. 53—Ward.) State traffic is always burdened with the expense of two terminals within the state, whereas interstate traffic very general is charged with the expense of but one terminal, and as to overhead or transstate shipments in carload lots, as is a
342 very considerable part of the business, no such expense is incurred beyond the comparatively small yard expense in the making up and handling of through trains.

Doubtless the most marked difference in transportation cost depends upon whether the freight handled is through or local with respect to the several operating divisions of the line. That is, freight hauled over less than one division on local or peddling trains, as they are called, is known as local freight, and freight hauled over one or more divisions on through trains is known as through freight on such divisions, and this without reference to whether it is state or interstate traffic. A divisional distance consists, in general, of from about

110 to 150 miles, the same constituting an engine-run. There is, of course, some intrastate traffic which moves on through trains, but the greater part thereof is local freight. There is also a considerable amount of interstate traffic which moves on local trains, but by far the greater part thereof is through freight, as is shown by the long average haul. It is also true that local trains often carry through freight and through trains carry local freight in order to secure the most efficient and economical operation.

In view of these and all other conditions attending transportation, as disclosed by the evidence, entering into the question of relative expense, it becomes a difficult matter to determine with any degree of certainty the relation of cost per ton per mile in transporting state and interstate freight respectively, the expense of which is practically all common to both and not subject to allocation. The complainants have produced as witnesses before the Master a very considerable number of able and competent operating men, intimately acquainted with and having a wide knowledge of all the details of railway transportation derived from long personal experience in conducting such business. Their testimony is to the effect that it costs from three to seven times as much per ton per mile to do the intrastate
343 freight business as to do the interstate freight business, and that it costs from twenty-five to fifty per cent per passenger per mile more to do the state passenger business than to do the interstate passenger business. The defendants concede that there is greater cost attending the doing of state business, both passenger and freight, but insist that this increased cost is largely, if not wholly, taken up by the increased revenue per ton and per passenger per mile derived from the state traffic. Their chief reliance is upon the evidence of their expert accountant Mr. Hillman, before mentioned, by the use of whose method, similar in many respects to that devised by him for dividing common items of cost between freight and passenger, in connection with his testimony in support of such method they have endeavored to establish their claim. The tables presented by him as a basis of his testimony are for most items of cost the result of his own personal judgment and opinion, and as to some of them upon which his results are predicated there have been certain material assumptions not justified by the conditions found to exist. Here, too, it is conceded that any material difference of opinion as to division—as there would most likely be with regard to some, if not many, of the items—would effect very substantially different results. Another matter tending to discredit the Hillman method is the wide spread in operating per cent between state and interstate business of some of the companies and the low operating per cent as to state business on some lines as compared with that on others and as compared with the operating per cent generally found to exist on all lines of all business done in the country. Operating per cent is the per cent of gross revenue absorbed by cost of operation, and if we may take the statement of counsel in one of the briefs for defendants, (and it would seem to be a matter as to which the Court might take judicial notice) such operating expense is about 60 per cent of gross revenue generally throughout the country. By

344 the Hillman method percentages of operating expense to revenue after deducting estimated losses from the prescribed rates in the three cases are found to be as follows:

Intrastate passenger, N. P. 58.89; G. N. 67; M. & St. L. 62.54.
Interstate passenger, N. P. 51.69; G. N. 59.2; M. & St. L. 63.67.
Intrastate freight, N. P. 55.21; G. N. 41.51; M. & St. L. 48.19.
Interstate freight, N. P. 54.47; G. N. 60.58; M. & St. L. 85.03.

In the St. Louis case, in the intrastate business, without deducting for estimated loss, the operating expense would have been only 41.9 per cent of intrastate revenue, and in the Great Northern case such operating expense would have been only 39.9 per cent of intrastate revenue. There seems to be no substantial reason for the difference here found to exist on the Northern Pacific when compared with the Great Northern line, and the marked and necessarily conceded difference in density of traffic over these liens and that over the Minneapolis & St. Louis line, the former greatly exceeding the latter, would be expected to produce very different results than those shown by this table of comparisons. The wide disparities and unusual results from comparisons are not adequately explained, and they strongly suggest an improper method of division between the two classes of business.

The Master finds from the weight of testimony that the cost per ton-mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one. He also finds from the evidence that the cost per passenger-mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota.

As a result of the foregoing findings of fact we are now in possession of all the elements for a finding of net revenue derived from the doing of intrastate freight business and intrastate passen-
345 ger business, respectively, and they may be stated as follows for each of the three cases:

Northern Pacific Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued, within the state of Minnesota for the fiscal year ending June 30, 1908, was $13,682,983.27. (Complainants' Exhibit 80 B—Elliott, treating rentals as a "net" item of $259,196.65).

The above total amount is made up as follows:

Freight revenue (transportation)	$9,509,077.33
Miscellaneous freight earnings derived from switching, demurrage, storage, etc.	314,431.02
Total freight earnings, including miscellaneous	$9,823,508.35

Total passenger revenue (transportation of persons)	$2,955,868.51
Miscellaneous pas-enger earnings (consisting of mail, express, etc.)	556,670.01
Total passenger earnings	$3,512,538.52
Total freight and passenger earnings	$13,336,046.87

Division Freight Earnings Between Intrastate and Interstate.

Total freight revenue, transportation:

Intrastate	$1,555,342.92 equals	16.356 per cent
Interstate	7,953,734.41 equals	83.644 per cent

346 *Miscellaneous Freight Earnings Divided on Basis of Transportation Revenue.*

Intrastate	$51,428.34 equals	16.356 per cent
Interstate	263,002.68 equals	83.644 per cent

Total freight earnings:

Intrastate	$1,606,771.26 equals	16.356 per cent
Interstate	8,216,737.09 equals	83.644 per cent
Total	$9,823,508.35 equals	100 per cent

Division Passenger Earnings Between Intrastate and Interstate.

Passenger rate:

Intrastate	$1,015,150.34 equals	34.344 per cent
Interstate	1,940,718.17 equals	65.656 per cent

Miscellaneous Passenger Earnings Divided on Basis of Transportation Revenue.

Intrastate	$191,182,75 equals	34.344 per cent
Interstate	365,487.26 equals	65.656 per cent

Total passenger earnings:

Intrastate	$1,206,333.09 equals	34.344 per cent
Interstate	2,306,205.43 equals	65.656 per cent
Total	$3,512,538.52 equals	100 per cent

In addition to the foregoing earnings there was derived from the use of property included in the foregoing valuation certain "miscellaneous income net items" from outside operations (sleeping, parlor and dining cars, etc.), rental received for use of tracks, yards and other property and hire of equipment, amounting in the aggregate to $346,936.40 plus $13,336,046.87 equals $13,682,983.27. (Ex. 80-B—Elliott.)

347 *Operating Expenses.*

Total operating expenses in Minnesota for said year. (Exhibit 80-B—Elliott.)	$7,655,350.20
Total taxes	596,118.51
Total	$8,251,468.71

(Exhibit 80-B—Elliott).

Total net income derived from the use of Minnesota property, included in valuation,—gross earnings from all such sources, $13,682,983.27—less operating expenses and taxes $8,251,468.71, leaves $5,431,514.56 equals 6.021 per cent return of value.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$5,343,718.25
And in the conduct of the passenger business	2,311,631.95
Total	$7,655,350.20

(Exhibit 79—Elliott.)

Division of Freight Operating Expenses Between Intrastate and Interstate Freight.

The total freight operating expenses—$5,343,718.25 may be fairly and justly divided between the intrastate freight business and the interstate freight business, on either one of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis"; and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

348 As hereinbefore found, during the said year, ending June 30, 1908, it cost said Company at least 2½ times as much on the average to produce a ton mile in the intrastate business as in the interstate busines-.

During said year the relation of revenue per ton per mile derived from the intrastate business was as 1.4387 is to 1.0000, and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

To divide the total freight operating expenses on the Equated Ton Mile Basis—the relation of cost per ton per mile of intrastate business to the cost per ton per mile of the interstate business being as 2½ is to 1—multiply the actual number of intrastate ton miles by 2½ and the product will be the number of intrastate ton miles which would have been produced by the expenditure which was actually made in the conduct of the intrastate freight business, if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average,—then add such product to the actual number of interstate ton miles, and the sum will be the total number of ton miles, both intrastate and interstate which would have been produced by the expenditure which was actually made in the conduct of both classes of business if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average,—this total may be called the "Equated Ton Miles." For the intrastate operating expenses take such percentage of the total freight operating expenses as the number of ton miles so increased—or equated—is of the total number of equated ton miles, and for the interstate operating expenses take such per cent of the total operating expenses as the interstate ton miles is of the total equated ton miles.

349 To divide such total freight operating expenses on the Equated Revenue Basis, the relation of cost per ton per mile of the intrastate business to the cost per ton per mile of the interstate business, being as 2½ is to 1, and the relation of revenue per ton per mile derived from the intrastate business to the revenue per ton per mile derived from the interstate business, being as 1.4387 is to 1.0000, first determine what—on such facts—is the relation of cost per ton per mile in the intrastate business in proportion to revenue, to the cost per ton per mile in the interstate business in proportion to revenue. This may be done by dividing such ton mile relation by such revenue relation, as follows:

$$\frac{250}{100} \div \frac{1.4387}{1.0000} = \frac{1.7377}{1.0000}$$

It, therefore, appears that the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and that such excess of cost is and will be at least 73.77 per cent.

To divide total freight operating expenses on the "Equated Revenue Basis" in accordance with the facts in this case as above stated:

Increase the intrastate earnings by 73.77%, thereby showing what would have been earned by the same actual expenditure in the

conduct of the intrastate business had it been attended with the same relative cost as the intrastate business. Then add the intrastate earnings, as so increased—or equated—to the interstate earnings, thereby ascertaining what would have been earned by the actual expenditure in conducting both intrastate and interstate traffic had the former been attended with the same relative cost as the latter. Then ascertain what proportion of this total represents the intrastate earnings as so increased—or equated—and what proportion represents the interstate earnings, and then ascertain the corresponding proportions of the total cost of the intrastate and interstate freight
350 traffic, and the same will be the cost of intrastate freight business and interstate freight business respectively. (See 163 Fed. 141.)

The equated ton mile basis on the relation of 2½ to 1 is in this case exactly the same as the equated revenue basis on the relation of 1.7377 to 1.0000.

Applying either of these rules to the facts above stated, the total freight operating expenses—$5,343,718.25—is divided as follows:

Intrastate	$1,355,273.82=25.362%
Interstate	3,988,444.43=74.638%
	$5,343,718.25=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated, it is found that during said year it cost said Company to produce an intrastate passenger mile in said State 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger mile in the intrastate business was $1.9404 (computed from 80 Elliott), and in the interstate business was 1.9228 (computed from 80 Elliott). The relation of such revenue, intrastate to interstate, is as 1.0092 to 1.0000. The relation of cost in proportion to revenue is:

$$\frac{115}{100} \div \frac{1.0092}{1.0000} = \frac{1.1395}{1.0000} \text{ or } 1.1395 \text{ to } 1.0000.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the "Equated Passenger Mile Basis," or the "Equated Revenue Basis," in like manner as that hereinbefore stated for the
351 division of the freight operating expenses between the intrastate freight business and interstate freight business on the two similar bases heretofore explained.

The "Equated Passenger Mile Basis," on relation of cost per passenger mile intrastate to interstate, 1.15 to 1, is exactly the same as the "Equated Revenue Basis" on the relation of 1.1395 to 1.0000.

Dividing the total passenger operating expenses, $2,311,631.95—100%—on either of such bases, there will be assigned to the intrastate passenger business $863,325.18=37.347%, and to the interstate passenger business $1,448,306.77=62.653%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $596,118.51. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

Intrastate freight	$71,820.32
Interstate freight	367,286.53
Intrastate passenger	53,924.08
Interstate passenger	103,087.58
	$596,118.51

Apportionment of Other Income to Various Classes of Business on the Gross Earnings Basis.

During said year the Company received for "Rentals" and for "Hire of Equipment" over and above amounts paid on account thereof in Minnesota, $259,196.65, which amount may justly and fairly be distributed between the various classes of business, on the gross earnings basis.

In addition to the last mentioned sum, there was received from "Outside Operations" (consisting of sleeping, dining, chair and parlor cars, etc.), $87,739.75, which may fairly and justly
352 be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there should be added to the earnings derived from each class of business the following sums:

Intrastate freight	$31,227.99
Interstate freight	159,698.85
Total	$190,926.84
Intrastate passenger	$53,579.92
Interstate passenger	102,429.64
Total	$156,009.56

(See Exhibit 80—B Elliott).

Net Income Applicable to Return Upon Valuation of Property Apportioned to the Various Classes of Business.

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated, there be deducted the sum of the

operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate net freight income $210,905.11 yields sufficient for an annual return on $10,867,837 of only 1.941%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. From Exhibit 63—Johnson, it is estimated that the intrastate freight earnings in Minnesota would have been reduced in said year by the application of such rates $21,493.67, which would effect a reduction in the rate of return last mentioned.

Intrastate passenger income $342,663.75 sufficient to yield an annual return upon $8,159,782 of only 4.2%.

353 Total intrastate (freight and passenger) income, $553,568.86, sufficient to yield an annual return on $19,027,619 (total valuation assigned to all intrastate business) of only 2.909%.

The foregoing data, deductions and results are included or deducible from the table following:

(Here follows table marked p. 353½.)

Using Earnings, Operating Expenses, Miscellaneous Income and Taxes shown in Complainant's Exhibits 79, 80 and 80-B Effect. Division of Operating Expenses between Interstate and Interstate as per bases shown in body of statement.
Year Ending June 30, 1928.

	State of Minnesota. Intrastate	Interstate	Total
Freight Revenue	$1,555,342.92 = 16.356%	$7,968,734.41 = 83.644%	$9,524,077.33 = 100%
Miscellaneous Freight Earnings divided on basis of revenue	51,428.34 = 16.356%	263,002.85 = 83.644%	314,431.19 = 100%
Freight Earnings	$1,606,771.26 = 16.356%	$8,216,737.09 = 83.644%	$9,838,508.35 = 100%
Passenger Revenue	$1,015,150.34 = 34.344%	$1,940,718.17 = 65.656%	$2,955,868.51 = 100%
Miscellaneous Passenger Earnings divided on basis of revenue	191,182.75 = 34.344%	365,457.26 = 65.656%	556,670.01 = 100%
Passenger Earnings	$1,206,333.09 = 34.344%	$2,306,205.43 = 65.656%	$3,512,538.52 = 100%

Operating Expenses:	Freight	Passenger	Total
Transportation Expenses	$3,118,371.99	$1,089,268.99	$4,207,640.98
Maintenance of Way and Structures	709,320.09	650,272.91	1,449,686.00
Maintenance of equipment	1,257,277.43	410,636.32	1,668,013.94
Traffic expenses	99,804.67	89,894.61	189,299.28
General expenses	98,846.15	71,826.28	170,673.43
Total	$5,343,718.25	$2,311,691.96	$7,655,380.20

Bases for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

Equated Ton Mile Basis

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	120,580,988	× 2.5	=	326,452,470	=	25.269%	$1,355,273.52
Interstate ton miles	960,709,494	× 1.0	=	960,709,494	=	74.639%	3,988,444.43
	1,091,290,482			1,287,161,964	=	100.%	$5,343,718.25

Equated Revenue Basis

Actual Revenue			Equated Revenue		
$1,555,342.92	× 1.7377	=	$2,703,719.39	=	25.381%
7,968,734.41	× 1.	=	7,968,734.41	=	74.619%
			$10,680,453.80	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

Equated Passenger Mile Basis

	Actual			Equated		Proportion	Operating Exps.
Intrastate passenger miles	32,317,140	× 1.15	=	60,164,711	=	37.247%	$860,331.15
Interstate passenger miles	100,931,180	× 1.00	=	100,931,180	=	80.653%	1,449,306.77
	133,248,320			161,095,891	=	100.%	$2,311,691.96

Equated Revenue Basis

Actual Revenue			Equated Revenue		
$1,015,150.34	× 1.1395	=	$1,156,763.81	=	37.247%
1,940,718.17	× 1.	=	1,940,718.17	=	62.653%
			$3,097,481.98	=	100.%

Divided on basis of earnings { Freight	$9,838,508.35	=	73.661%
Passenger	3,512,538.52	=	26.339%
Total	$13,356,046.87	=	100.%

		Freight		Passenger	
Rentals received less rental paid	73.661% of	($241,023.35 / 16,173.10)	= $190,936.84	$68,260.61	= 26.339%
Hire of equipment	73.661% of				
Taxes	73.661% of	593,118.51	= 439,108.85	157,011.66	= 26.339%

Summary of Results (Valuation divided on basis of Earnings)

Freight Business:	Intrastate	Interstate	Total
Earnings	$1,606,771.26 = 16.256%	$8,216,737.09 = 83.644%	$9,823,508.35 = 100%
Rentals and hire of equipment	31,237.99 = 16.256%	159,688.85 = 83.644%	190,926.84 = 100%
	$1,637,909.25 = 16.256%	$8,376,425.94 = 83.644%	$10,014,435.19 = 100%
Operating expenses	$1,355,273.52	$3,988,444.43	$5,343,718.25
Taxes	71,220.32 = 16.256%	367,286.32 = 83.644%	438,106.64 = 100%
	$1,427,094.14	$4,355,730.96	$5,782,825.10
Income applicable to valuation	$210,905.11	$4,020,704.98	$4,231,610.09
Valuation 73.661% of $90,304,845.00	10,987,327.00 = 16.256%	55,577,733.00 = 83.644%	66,445,370.00 = 100%
Annual return	1.941%	7.234%	6.369%
Passenger Business:			
Earnings	$1,206,333.09 = 34.344%	$2,306,205.43 = 65.656%	$3,512,538.52 = 100%
Outside operations	30,133.34 = 34.344%	57,603.41 = 65.656%	87,729.75 = 100%
Rentals and hire of equipment	23,446.58 = 34.344%	44,852.23 = 65.656%	68,298.81 = 100%
	$1,260,913.01 = 34.344%	$2,408,661.07 = 65.656%	$3,668,845.08 = 100%
Operating expenses	$860,335.15	$1,449,306.77	$2,311,691.96
Taxes	58,934.06 = 34.344%	108,077.59 = 65.656%	157,011.65 = 100%
	$917,269.20	$1,551,384.35	$2,468,063.61
Income applicable to valuation	$343,663.75	$857,240.72	$1,199,904.47
Valuation 26.339% of $90,304,845.00	6,189,781.00 = 34.344%	15,590,193.00 = 65.656%	22,779,975.00 = 100%
Annual return	5.549%	5.499%	5.269%
Total Business:			
Income applicable to valuation	$553,568.86	$4,877,945.70	$5,431,514.56
Valuation	16,027,819.00	71,178,926.00	90,304,845.00
Annual return	3.509%	6.859%	6.021%

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $21,662.67, nor any similar losses that would have accrued on Interstate commodity business.

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354 NOTE 1.—In this statement the valuation of the property is divided upon the revenue basis between freight and passenger and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Dividing Valuation on Operating Expense Basis.

Intra freight operating expenses.....	$1,355,273.82=	17.7%
All operating expenses.....	7,655,350.20=	100%
17.7% of $90,204,545 valuation=	16,166,204	
Intra income—freight.....	210,905.11	
Annual return.....		1.304%

Intra Passenger.

Intra Passenger operating expenses.....	$863,325.18=	11.28%
All operating expenses.....	7,655,350.20=	100%
11.28% of $90,204,545 valuation=	10,175,073	
Intra income—passenger.....	342,663.75	
Annual return.....		3.368%

The rate of return on interstate freight and passenger would be increased over that shown in the statement.

There were introduced in evidence various statements by defendants for the purpose of showing what they claimed the actual net Minnesota intrastate freight and Minnesota intrastate passenger incomes were in the business of the fiscal year ending June 30, 1907, but the same, when taken in connection with all the testimony, fail to show that the rates complained of were not confiscatory. The defendants offered no corresponding statements with respect to such business for the year ended June 30, 1908.

355 Great Northern Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued within the state of Minnesota, for the fiscal year ending June 30, 1908, was $20,831,317.57. (See Exhibit 30—Parker, 49—Martin, 53—Ward and reports to the State, fiscal year ending June 30, 1908.)

The above total amount is made up as follows:

Freight revenue transportation	$15,658,661.07
Miscellaneous freight earnings derived from switching, demurrage, storage, etc	278,337.78
Total freight earnings including miscellaneous	$15,936,998.85
Total passenger revenue (transportation of persons)	3,640,627.45
Miscellaneous passenger earnings (consisting of mail, express, etc.)	698,281.45
Total passenger earnings	$4,338,908.90
Total freight and passenger earnings	20,275,907.75

Division of Freight Earnings Between Intrastate and Interstate.

Total freight revenue transportation:

Intrastate	$2,366,359.02=15.112%
Interstate	13,292,302.05=84.888%

Miscellaneous freight earnings divided on basis of transportation revenue:

Intrastate	$42,062.41=15.112%
Interstate	236,275.37=84.888%

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Total freight earnings:

Intrastate	$2,408,421.43=15.112%
Interstate	13,528,577.42=84.888%
Total	$15,936,998.85=100%

Division Passenger Earnings Between Intrastate and Interstate.

Passenger revenue:

Intrastate	$1,750,522.02=48.083%
Interstate	1,890,105.43=51.917%

Miscellaneous passenger earnings divided on basis of transportation revenue:

Intrastate	$335,754.66=48.083%
Interstate	362,526.79=51.719%

Total passenger earnings:

Intrastate	$2,086,276.67=48.083%
Interstate	2,252,632.22=51.917%

In addition to the foregoing earnings there was derived from the use of the property included in the foregoing valuation certain mis-

cellaneous income from outside operations (sleeping, parlor, dining cars, etc.), rentals received for use of tracks, yards and other property and hire of equipment amounting in the aggregate to $555,409.82+$20,275,907.75=$20,831,317.57. (See exhibits and reports above cited.)

Operating Expenses.

Total operating expenses in Minnesota for said year (See Exhibit 47—Martin)	$11,811,414.35
Total taxes	839,878.11
Total	$12,651,292.46

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Total net income derived from the use of property in Minnesota—gross earnings from all sources	$20,831,317.57
Less operating expenses and taxes	12,651,292.46
Leaves	$8,180,025.11

=5.909% on $138,425,291 total Minnesota valuation.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$8,141,355.61
And in the conduct of the passenger business	3,670,058.74
Total	$11,811,414.35

(See Exhibit 47—Martin.)

Division of Freight Operating Expenses Between Intrastate and Interstate.

The total freight operating expenses—$8,141,355.61—may be justly and fairly divided between the intrastate freight business and the interstate freight business on either of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis;" and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

As hereinbefore found, it did during said year, cost said Company at least 2½ times as much on an average to produce a ton mile in the intrastate business as in the interstate business.

358 During said year the relation of revenue per ton per mile derived from intrastate business to the revenue per ton mile derived from the interstate business was as 2.02894 is to

1.00000 (53—Ward); and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

The relation of cost per ton per mile in the intrastate business in proportion to revenue to the cost per ton per mile in the intrastate business in proportion to revenue is..... $\frac{250}{100} \div \frac{2.02894}{1.00000}$

or 1.23217 to 1.00000. That is to say, the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and such excess of cost is and will be at least 23.217%.

The division of the total freight operating expenses on the Equated Ton Mile Basis or on the Equated Revenue Basis may be effected in the same manner as that heretofore described in the Northern Pacific case.

The Equated Ton Mile Basis on the relation of 2½ to 1 is in this case exactly the same as the Equated Revenue Basis on the relation of 1.23217 to 1.

Applying either of the rules above referred to to the facts in this case as above stated, the total freight operating expenses, $8,141,355.61, is divided as follows:

Intrastate	$1,464,629.87=17.99%
Interstate	6,676,725.74=82.01%
	$8,141,355.61=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated it is found that during said year it cost said Company to produce an intrastate passenger mile, in said
359 State, 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger per mile in the intrastate business was 1.9016, and in the interstate business was 2.0469. (53—Ward.)

The relation of such revenue intrastate to interstate is as 0.92901 is to 1.0000.

The relation of cost in proportion to revenue is

$$\frac{115}{100} \div \frac{0.92901}{1.00000} = \frac{1.2378}{1.00000} \text{ or } 1.2378 \text{ to } 1.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the Equated Passenger Mile Basis, or the Equated Revenue Basis, in like manner as that hereinbefore stated in the Northern Pacific

case for the division of the freight operating expenses between the intrastate freight business and the interstate freight business, on the two similar bases there explained.

The Equated Passenger Mile Basis on the relation of cost per passenger mile intrastate to interstate, 1.15 to 1. is exactly the same in this case as the Equated Revenue Basis on the relation of 1.2378 to 1.

Dividing the total passenger operating expenses—$3,670,058.74—100%—on either of such bases, there will be assigned to intrastate passenger business $1,960,215.07=53.411%, and to the interstate passenger $1,709,843.67=46.589%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $839,878.11. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

360	Intrastate freight	$99,761.00
	Interstate freight	560,383.19
	Intrastate passenger	86,421.46
	Interstate passenger	93,312.46
	Total	$839,878.11

Apportionment of Other Income to Various Classes of Business on Gross Earnings Basis.

During said year the Company received for rentals and for hire of equipment over and above amounts paid on account thereof in Minnesota $462,763.95, which amount may justly and fairly be distributed between the various classes of business on the gross earnings basis.

In addition to the said last mentioned sum there was received from outside operations (consisting of sleeping, dining, chair and parlor cars, etc.) $92,645.87, which may fairly and justly be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there was added to the earnings derived from each class of business the following sums:

Intrastate freight	$54,976.35
Interstate freight	308,756.11
	$363,732.46
Intrastate passenger	$92,164.22
Interstate passenger	99,513.14
	$191,677.36

(See reports to the State for the year ending June 30, 1908.)

361 *Net Income Applicable to Return upon Valuation of Property Apportioned to the Various Classes of Business.*

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated there be deducted the sum of the operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate freight, income, $898,997.81, sufficient to yield an annual return on $16,442,200 of only 5.468%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. The same are shown by Exhibit 22—Parker to be $87,261.43 (and by Exhibit G—Hillman, Table 11, $129,852.53). Deducting the amount shown by Complainants—$87,261.43—less 4% taxes—$3,490.46—leaves a net deduction $83,770.97, which subtracted from net intrastate freight income as above stated, $898,997.81, would leave $815,226.84, sufficient to yield an annual return on the value above stated (valuation not reapportioned on account of change in revenue) of 4.958%. And if the amount of such losses as estimated by the defendants be taken, the rate of return would be less than the figure last stated.

Intrastate passenger income $131,804.37 is sufficient to yield an annual return upon $14,243,633 of only 0.925%.

Total intrastate (freight and passenger) income (estimated commodity losses not deducted), $1,030,802.18 is sufficient to yield an annual return on $30,685,833 (total valuation assigned to all intrastate business) of only 3.359%.

Deducting the commodity losses, less the taxes, as estimated by complainants as aforesaid, the total intrastate (freight and passenger) income would be sufficient to yield an annual return on total value assigned to all intrastate business of only 3.086%.

The foregoing data, deductions and results are included in or deducible from the table following:

(Here follows table, marked p. 361½.)

Using Complainants' Exhibits 47 and 48—March and 83—Ward, together with reports of Great Northern Railway Co., Minneapolis Western Railway and Duluth Terminal Railway to State of Minnesota. Division of Operating Expenses, Miscellaneous Earnings, Outside Operations, Rentals, Hire of Equipment and Taxes between Intrastate and Interstate as shown in the body of statement. Year Ending June 30, 1908.

	Intrastate		Interstate		Total	
Freight revenue	$2,366,359.02	= 15.112%	$13,292,202.05	= 84.888%	$15,658,561.07	= 100%
Miscellaneous freight earnings divided on basis of revenue	42,062.41	= 15.112%	236,275.37	= 84.888%	278,337.78	= 100%
Freight earnings	$2,408,421.43	= 15.112%	$13,528,477.42	= 84.888%	$15,936,898.85	= 100%
Passenger revenue	$1,750,822.02	= 48.083%	$1,890,105.43	= 51.917%	$3,640,927.45	= 100%
Miscellaneous passenger earnings divided on basis of revenue	335,754.88	= 48.083%	362,326.79	= 51.917%	696,281.45	= 100%
Passenger earnings	$2,086,276.66	= 48.083%	$2,252,432.22	= 51.917%	$4,336,908.90	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation expenses	$3,921,805.03	$1,471,789.35	$5,393,594.38
Maintenance of way and structures	1,906,856.44	1,328,235.87	3,234,092.31
Maintenance of equipment	2,024,122.76	661,590.24	2,685,709.00
Traffic expenses	131,311.40	116,530.14	247,841.54
General expenses	148,259.98	101,347.34	249,607.32
	$8,141,355.61	$3,670,088.74	$11,811,444.35

Basis for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

Equated Ton Mile Basis

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	171,317,736	× 2.5	=	428,294,415	=	17.99%	$1,464,029.87
Interstate ton miles	1,952,426,997	× 1.0	=	1,952,426,997	=	82.01%	6,676,725.74
	2,123,744,733			2,380,721,382	=	100.%	$8,141,355.61

Equated Revenue Basis

	Actual Revenue			Equated Revenue		
Intrastate ton miles	$2,366,359.02	× 1.52217	=	$3,615,736.39	=	17.99%
Interstate ton miles	13,292,202.05	× 1.	=	13,292,202.05	=	82.01%
				$16,208,068.64	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

Equated Passenger Mile Basis

Intrastate passenger miles	92,063,657	× 1.15	=	105,861,706	=	53.411%	$1,980,215.07
Interstate passenger miles	92,341,852	× 1.	=	92,341,852	=	46.589%	1,709,843.67
	184,395,509			196,203,558	=	100.%	$3,670,088.74

Equated Revenue Basis

Intrastate passenger miles	$1,750,822.02	× 1.2378	=	$2,166,796.16	=	53.411%
Interstate passenger miles	1,890,105.43	× 1.	=	1,890,105.43	=	46.589%
				$4,056,901.59	=	100.%

Divided on basis of earnings { Freight	$15,936,898.85	=	78.6%
Passenger	4,336,908.90	=	21.4%
Total	$20,275,807.75	=	100.%

	Totals	Freight 78.6%	Passenger 21.4%
Rentals received	$378,934.22		
Rentals paid	56,594.84		
Net rentals received	$322,339.48		
Hire of equipment received	140,424.47		
	$462,763.95	$363,732.46	$99,031.49
Taxes paid	529,878.11	680,144.19	179,733.92

Summary of Results.

Freight Business:	Intrastate		Interstate		Total	
Earnings	$2,408,421.43	= 15.112%	$13,528,477.42	= 84.888%	$15,936,898.85	= 100%
Proportion of rentals and hire of equipment	54,967.25	= 15.112%	308,765.21	= 84.888%	363,732.46	= 100%
	$2,463,388.68	= 15.112%	$13,837,242.63	= 84.888%	$16,300,731.31	= 100%
Operating expenses	$1,464,629.87		$6,676,725.74		$8,141,355.61	
Taxes	99,761.00	= 15.112%	560,383.19	= 84.888%	680,144.19	= 100%
	$1,564,390.87		$7,237,108.93		$8,801,499.80	
Income applicable to valuation	$898,997.81		$6,600,133.70		$7,499,231.51	
Valuation 78.6% of $138,425,291.00	16,442,200.00	= 15.112%	92,380,079.00	= 84.888%	108,802,279.00	= 100%
Annual return on valuation	5.469%		7.146%		6.893%	

Passenger Business:						
Earnings	$2,086,276.66	= 48.083%	$2,252,432.22	= 51.917%	$4,336,908.90	= 100%
Outside operations	44,546.91		48,098.96		92,645.87	
Proportion of rentals and hire of equipment	47,817.31		51,414.18		99,031.49	
	$2,178,640.90	= 48.083%	$2,351,945.36	= 51.917%	$4,530,586.26	= 100%
Operating expenses	$1,980,215.07		$1,709,843.67		$3,670,088.74	
Taxes	86,421.46	= 48.083%	93,312.46	= 51.917%	179,733.92	= 100%
	$2,066,636.53		$1,803,156.13		$3,869,792.66	
Income applicable to valuation	$111,804.37		$548,789.23		$660,793.60	
Valuation 21.4% of $138,425,291.00	14,242,633.00	= 48.083%	18,379,379.00	= 51.917%	29,622,012.00	= 100%
Annual return on valuation	0.938%		2.870%		2.230%	

Freight and Passenger Business:			
Total income in Minnesota applicable to valuation	$1,010,802.18	$7,148,922.93	$8,159,025.11
Valuation	30,685,833.00	107,759,458.00	138,425,291.00
Annual return	3.359%	6.636%	5.895%

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $67,261.43, nor a loss of $309,922.43 that would have accrued on Interstate commodity business in Minnesota. (Complainants' Exhibits 33, 34, 36 and 39—Parker.)

(601)

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362 NOTE 1.—In this statement valuation of the property is divided upon the revenue basis between Freight and Passenger, and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Intra Freight operating expenses	1,464,629.87	=12.4%
All operating expenses	11,811,414.35	= 100%
12.4% of $138,425,291 valuation	= 17,164,738	
Income—Intra Freight	898,997.81	
Annual return	5.237%	

Intra Passenger.

Intra Passenger operating expenses	$1,960,215.07	=16.6%
All operating expenses	11,811,414.35	= 100%
16.6% of $138,425,291 valuation	= 22,978,596	
Income—Intra Passenger	131,804.37	
Annual return	0.574%	

The rate of return on interstate freight and interstate passenger would be increased over that shown in the statement.

NOTE 2.—The intrastate freight loss which would have resulted by the application of Chapter 232 was estimated by Hillman's Exhibit G, Table 10, at $129,852.53. By Parker's Exhibit 22 it was estimated at $87,261.43. In the statement no deduction has been made from intrastate freight revenue on account of such loss.

The amount of intrastate net freight revenue shown by the statement is	$898,997.81
Subtracting loss shown by Exhibit 22—Parker	87,261.43
The new net intrastate revenue would be	$811,736.38

363 Divided by the proportion of value assigned to intrastate freight, to-wit, $16,442,200, the net annual return of 4.937% on intrastate freight will be the result instead of 5.468% as shown on the statement. (The computation producing the rate of return first above mentioned—4.937—does not take into account the reapportionment of value to intrastate freight resulting from the reduction of intra gross freight earnings. If such reapportionment were made the value of property so assigned would be somewhat decreased, and the rate of return somewhat increased over 4.937).

NOTE 3.—Hillman does not show the intrastate freight loss which did result from the application of the merchandise rates complained of. Parker by his Exhibit 22 did show the same to be $178,978.96. What would be the net annual return on value of property appor-

tioned to intrastate freight if injunction continues against commodity rates, and old merchandise rates prior to orders of September 6, 1906, and May 3, 1907, be fully restored?

The statement shows net intrastate freight pays.....	$898,997.81
Add merchandise loss	178,978.96
And the new net intrastate freight income would be.	$1,077,976.77

which divided by value assigned to intrastate freight—$16,442,200—(not reapportioned to correspond with increased intrastate earnings), less than 6.556% would be produced. But if valuation be reapportioned to correspond with increased intrastate gross earnings, $17,115,651.00, valuation would be assigned to intrastate freight business, which divided into the new net intrastate freight earnings—$1,077,976.11—then 6.293% return on intrastate freight business would be shown on basis of old rates, merchandise and commodity.

NOTE 4.—The statement shows passenger intrastate net income applicable to valuation to be $131,804.37, and the rate of return to be less than 1%, to-wit, 0.925%. Tilton, by his Exhibit 37, shows a passenger intrastate loss of $470,673.17. If this be added
364 to $131,804.37, a new net intra passenger income applicable to valuation of $602,477.54 would result. The value apportioned to intra passenger business in the statement on the basis of the gross earnings as they were was $14,243,633. If the passenger rates were restored to the 3 cent basis, and gross earnings thereby increased, an apportionment of value on basis of increased earnings would assign to intra passenger $16,914,224.00, which divided into the new net income—$602,477.54—would produce only 3.56% return on intra passenger business if the old rates were restored.

There were introduced in evidence various statements by defendants for the purpose of showing what they claim the actual net Minnesota intrastate freight and Minnesota intrastate passenger income were on the business of the fiscal year ending June 30, 1908, (see Exhibit G—Hillman).

The gross receipts of said Company from all sources in Minnesota used in the foregoing table exceeds the gross receipts charged against the Company in Minnesota by defendants' evidence (excluding income on investments), $146,528.27, of which more than $140,000 was on account of hire of equipment not taken into account by defendants in their tables. There is no dispute between the parties as to the total amount of operating expenses chargeable to the business of the Company done within the State.

There is considerable difference between the parties in the distribution of revenue to the various classes of business, intrastate freight and interstate freight, intrastate passenger and interstate passenger, and also a considerable difference as to the assignment of operating expenses to each such class of business, which difference, as respects the operating expenses, is due to the methods of division of the total amount thereof employed by the witness Hillman. As hereinbefore stated, the results obtained by the employment of his

methods of division of operating expenses are found not to be correct, fair or just.

If the distribution of the total revenue to such various classes of business be made as the defendants' exhibits indicate, and
365 the division of the operating expenses between the freight department and the passenger department be made as hereinbefore found to be fair and just, and the division of freight cost between the intrastate business and the interstate business be made as hereinbefore found to be fair and just, and the division of passenger cost between the intrastate business and interstate business be made as hereinbefore found to be just and fair, the result would not affect the final decree recommended to be entered.

Apportionment of Value Between Freight and Passenger Business and Between Intrastate and Interstate Business of Each.

Minneapolis & St. Louis Case.

Total value of the property of the Minneapolis & St. Louis Company used in the fiscal year ending June 30, 1907, in the conduct of its business in Minnesota, was, as hereinbefore found, $21,608,464.

Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each.

A statement of freight and passenger revenues in Minnesota, for the year ending June 30, 1907, divided between Minnesota intrastate business and Minnesota interstate business, is as follows:

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	Minnesota intrastate.	Minnesota interstate.	Total.
Freight revenue....	$534,696.66	$1,180,155.91	$1,714,852.57
Passenger revenue..	352,008.52	298,258.28	650,266.80
	$856,705.18	$1,478,414.19	$2,365,119.37
Per cent.....	37.49%	62.51%	100%

(Ex. 33—Scott, Section D.)

The following is a summary of the apportionment of total value to the different classes of business in Minnesota:

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1907.....	$21,608,464.00

Total value apportioned to freight business, 72.51%, or	$15,668,297.24	
Total value apportioned to passenger business, 27.49%, or	5,940,166.76	
Total		$21,608,464.00
Assign to intrastate freight business 31.180% of total value apportioned to freight business		$4,885,673.71
Assign to interstate freight business 68.820% of total value apportioned to freight business		10,782,623.53
Assign to intrastate passenger business in Minnesota 54.13% of the total value assigned to passenger business		3,215,339.44
Assign to interstate passenger business in Minnesota 45.87% of total value assigned to passenger business in Minnesota		2,724,827.32
		$21,608,464.00

If such valuation were to be apportioned on the same basis but according to the figures shown by defendants' evidence (see Ex. L—Hillman, Table 14), the final decision would not be changed.

To yield an annual return of 7% upon the value so assigned, there would be required for intrastate freight	$341,997.15
For interstate freight	754,783.64
For intrastate passenger	225,073.76
For interstate passenger	190,737.91
Total	$1,512,592.48

The defendants introduced testimony and exhibits which show what they claim to have been the net income (after paying only operating expenses and taxes), derived from the intrastate freight business, and from the intrastate passenger business as follows:

Total income, all sources, applicable to intrastate freight	$225,890.00

(Defendants' Ex. L.—Hillman, Table 12.)

Total income, all sources, applicable to intrastate passenger	148,721.70

(Defendants' Ex. L.—Hillman, Table 13.)

Each of the amounts so claimed by defendants is in excess of the actual net income from all sources, derived from such classes of business respectively, over and above operating expenses and taxes. The method employed by the defendants for the ascertainment of

the amount of operating expenses chargeable to each such class of business was not correct, fair or just, and resulted in assign-
368 ing to each such class of business an amount much less than was in fact expended by said Company in said year in the conduct thereof.

* * * * * * *

The total net earnings of said Company for said year 1907 in Minnesota, from all sources, which involved the use of the property included in such valuation was $895,977.66, sufficient to yield an annual income upon such value of $21,608,464 *of* only 4.14%.

(See Ex. 33—Scott.)

The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said Company in said year in said state, and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14% upon the proportion of the value of the whole property which was used in the conduct of each such class of business, and which is properly chargeable thereto.

Net Earnings.

(Entire Railway System of said Company.)

The net earnings, after paying only operating expenses and taxes, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,398,895.30	$1,229,524.49	$1,277,870.96	$1,511,961.99

1907.	1908.	1909.
$1,419,822.54	$1,220,862.21	$1,286,494.08

(Ex. 33—Scott.)

369 *Net Earnings.*

(Minnesota.)

The net earnings of said Company, after paying only operating expenses and taxes, on all of its business in Minnesota, from all sources, involving any use of the property valued herein, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,222,941.77	$1,052,478.74	$1,054,853.35	$1,109,260.56

1907.	1908.	1909.
$895,977.66	$742,377.46	$794,472.58

Interest Charges.

As of date April 30, 1908, the annual interest charges which said Company was and is subject to pay on account of bonds was $952,583.

If this be apportioned among states on the basis of gross earnings, the amount chargeable to each state is as follows:

Minnesota	$690,517
Iowa	244,120
South Dakota	17,946
	$952,583

(Exhibit 6—Scott.)

The par value of such bonds on said date was $20,011,800.
(Exhibit 6—Scott.)

Effect of Rates Complained of Upon Revenue. Merchandise Rates.

If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate rev-
370 enue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½% of the revenue derived from such business.

(Ex. 16—Scott and Ex. 21—Tittemore.)

Passenger Business.

On the volume of the passenger service rendered by the Minneapolis & St. Louis Company within the state of Minnesota for the year ending June 30, 1906—the last complete fiscal year during which the basis of maximum fare of three cents per mile was applied by said Company—the losses in revenue which would have resulted had the two cent per mile passenger law complained of been in effect, are as follows:

Intrastate passenger business in Minnesota	$80,452
Interstate passenger business in Minnesota	66,372
	$146,824

(See Ex. 13—Scott.)

The volume of passenger service rendered during the fiscal year 1907 was greater than the preceding fiscal year.
(Ex. 12—Scott, Ex. 33—Scott.)

Commodities—Chapter 232.

As hereinbefore stated, the Northern Pacific Company, the Great Northern Company and the Soo Company reduced rates in the autumn of 1906, in Minnesota, on coal and grain. By reason of

these reductions the Minneapolis & St. Louis Company was compelled to make certain reductions on coal and grain on its line with respect to such business, intrastate, in Minnesota, and certain of its corresponding interstate business. Immediately prior to the commencement of these suits the Minneapolis & St. Louis Com-
371 pany, intending to obey the law and apply the rates prescribed in Chapter 232, prepared certain tariffs covering the commodities described in said Chapter 232, which tariffs with respect to intrastate business were as high as said Company could maintain under the act, and which interstate tariffs were as high as said Company could maintain and comply with the provisions of said act with respect to such intrastate business.

On the volume of business in the transportation of commodities covered by said act, of said Company, moved during the fiscal year ending June 30, 1906, the revenues of said Company—if the aforesaid tariffs required and made necessary by the provisions of said act, had been in force, would have been decreased below what the same would have been had the rates remained the same as they were in fact after the reductions in the autumn of 1906, made necessary by reason of the reductions in the northern lines hereinbefore referred to, as follows:

Minnesota intrastate..	$51,802.22,	more than 14 % of revenue affected.
Minnesota interstate..	66,842.46,	more than 16 % of revenue affected.
Other interstate.....	26,847.55,	more than 11 % of business affected.
Making a total of...	$145,492.23,	more than 14 % of business affected.

Comparing the revenue on the commodities described in said act, which would have been received on the business of the fiscal year ending June 30, 1906, under the rates prescribed in said act, with revenue which would have been received on the same business if the rates had remained the same throughout the year as they were prior to the reductions made as aforesaid in the autumn of that year, the resulting loss would have been as follows:

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Minnesota intrastate..	$70,760.83,	more than 19 % of revenue affected.
Minnesota interstate..	82,101.42,	more than 19 % of revenue affected.
Other interstate.....	26,847.55,	more than 11 % of revenue affected.
Total	$179,709.80,	more than 17 % of revenue affected.

(See Ex. 14-A—Tittemore.)

Revenue Derived from Operation, Fiscal Year Ending June 30, 1907.

(Exhibit 33—Scott, Sec. D, Exhibit M—Hillman.)

	Intrastate.	Interstate.	Total.
Freight revenue (transportation).....	$534,696.66 31.18%	$1,180,155.91 68.82%	$1,714,852.57
Miscellaneous (consisting of switching, demurrage, storage, etc.).....	1,151.55	2,541,67	3,693.22
	$535,848.21	$1,182,697.58	
Passenger revenue.....	$352,008.52 54.13%	$298,258.28 45.87%	$650,266.80
Miscellaneous (consisting of mail, express, excess baggage, etc)..... ...	60,474.43	51,246.29	111,720.72
	$412,482.95	$349,504.57	$2,480,533.31

(Division of Miscellaneous between intra and inter is on gross revenue basis.)

373 Operating expenses in the state..... $1,554,595.49
(Exhibit 33—Scott.)

Divided between freight and passenger as follows:

Passenger	$523,375.97	
Freight	1,031,219.52	$1,554,595.49

(Exhibit 33—Scott, Sec. B and p. 1175 P. R. et seq.)

Dividing freight operating expenses—$1,031,219.52—on "straight revenue basis":

Assigns 31.18%=$321,534.25 to intrastate freight,
Assigns 68.82%=$709,685.27 to interstate freight.

Dividing passenger operating expenses, $523,375.97 in like manner,

Assigns 54.13%=$283,303.41 to intrastate passenger,
Assigns 45.87%=$240,072.56 to interstate passenger.

Taxes paid in Minnesota, fiscal year ending June 30, 1907, $124,474.58, (Ex. 33—Scott, Sec. B), apportioned to the various classes of business on revenue basis.

Assigns 22.61% thereof = $28,143.70 to intrastate freight,
Assigns 49.90% thereof = $62,112.81 to interstate freight,
Assigns 14.88% thereof = $18,521.77 to intrastate passenger,
Assigns 12.61% thereof = $15,696.24 to interstate passenger.

Adding operating expenses assigned to each such class of business to taxes assigned to each such class of business, and subtracting the sum from the foregoing gross earnings from operation of each such class of revenue, and we have the following results:

Intrastate freight, net operating revenue less operating expenses and taxes	$186,170.26
Interstate freight, net operating revenue less operating expenses and taxes	410,899.50
374 Intrastate passenger, net operating revenue less operating expenses and taxes	110,657.77
Interstate passenger, net operating revenue less operating expenses and taxes	93,735.77
Total net operating revenue	$801,463.30

less taxes (stated in Ex. 33—Scott earnings over expenses and taxes.)

In addition to the earnings aforesaid the Company received in Minnesota in said year from use of its property certain "other income," being net items aggregating $94,514.42, (Ex. 33—Scott, Sec. B), which distributed on the revenue basis,

Assigns 22.61% or $21,369.71 to intrastate freight,
Assigns 49.90% or $47,162.69 to interstate freight,
Assigns 14.88% or $14,063.74 to intrastate passenger,
Assigns 12.61% or $11,918.26 to interstate passenger.

Adding $21,369.71 (other income assigned to intrastate freight) to $186,170.26 (earnings over expenses and taxes) we have $207,539.97.

The commodity rates complained of were enjoined. Had the same been in effect intrastate freight revenue would have been decreased on that account at least $51,802.22. (See Ex. 14-A—Tittemore.)

The class rates complained of were applied November 15, 1906. Had the same been in effect during the whole of the fiscal year the revenue of the Company would have been decreased on that account 9/24 multiplied by $33,367.30=$12,512.74 (see Exhibit 15—Scott), making the total reduction of intrastate revenue on account of the rates complained of $51,802.22 plus $12,512.74=$64,314.96, which subtracted from $207,539.97 leaves $143,225.01, sufficient to pay an annual return of 2.93% upon $4,885,673.00, proportion of value assigned to intrastate freight.

375 The net earnings of the intrastate passenger business over expenses and taxes, $110,657.77 plus $14,063.74, the intrastate passenger proportion of other income=$124,721.51, the total net intrastate passenger income from all sources involving any use of the property valued.

The passenger rates complained of were first applied May 1, 1907. If the same had been in effect during the whole of such fiscal year the intrastate passenger revenue would have been decreased 5/6 of $80,452.00, or $67,043.34, which subtracted from $124,721.51, leaves $57,678.17, sufficient to yield only 1.79% on $3,215,339.00, value assigned to intrastate passenger business.

The total net intrastate income, freight and passenger, all sources, involving any use of the property,

Intrastate freight	$143,225.01
Intrastate passenger	57,678.17
Total	$200,903.18

divided by $4,885,673.00, intrastate freight value plus $3,215,339.00, intrastate passenger value, or $8,101,012.00—2.47% return divided from total intrastate business on total valuation of property assigned thereto.

Dividing the freight operating expenses and the passenger operating expenses of Minnesota between intrastate and interstate business, respectively, on the straight revenue basis, as aforesaid, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof; and consequently the rates of return on value 2.93% for intrastate freight and 1.79% for intrastate passenger, and 2.47% for total intrastate—freight and passenger—are in excess of the actual returns respectively which would have been earned if the rates complained of had been in effect during the whole of such fiscal year.

376 It appears from the foregoing facts, in these three cases and the Master finds that for the two years next prior to July 1, 1908, in these three cases the revenue derived by the said defendant railway companies and each of them from the property thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger- and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad & Warehouse Commission and the Acts of the legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined.

XVIII.

Express Business.

The relation of the express companies, doing business over the Northern Pacific Company's and Great Northern Company's respective lines of railway, to the said respective companies ought not to be passed over without mention. It appears that each railroad company owns all the stock of the express company operating on its line and that the express business is conducted under a contract between the express company and the railway company whereby the latter receives certain fixed compensation for the privileges granted to

the express company, which compensation, of course, is included in the operating revenue of the railway company. But the
377 express company pays very substantial dividends on its capital stock which is received by the railway company but not included by it in such operating revenue, and there is considerable force in defendants' contention that such dividends should be considered as operating revenue. It must be remembered, however, that the business of an express company is in many respects of a very different character to that of a railway company, and its scope is much broader than that of an ordinary common carrier. The business of such express company is to assemble, insure, especially care for and speedily forward to and distribute at point of destination all articles of transportation committed to its charge, including the issuing of express money orders, making collections and other like kinds of service required in commercial affairs. Manifestly such services in general are widely different from those usually performed by a railway company, and suggests the propriety if not the necessity of a separate and independent agent for their performance. Since, however, by ownership of stock the railway company receives the net revenue of the express company, and does not include it as a revenue derived from the operation of its own business, as indeed it is not, it is important that the public who are directly interested in the operating revenue of the railway company, derived as it is from rates paid by them, should be protected against any unfair contract between the railway company and the express company controlled by it whereby the latter may not be accorded full value for services rendered, and the burden of establishing the fairness of such contract whenever called in question is upon the railway company. In the instant cases, however, the evidence does not justify a finding that the railway companies in question do not receive full and fair compensation for services rendered to the express companies, and they are, therefore, not required to include express dividends in their operating revenue.

378 **XIX.**

Conclusion.

The foregoing findings of fact and conclusions of law the Master deems sufficient to cover all the issues necessary for final judgment in these three cases. It is needless to say that they have been thoroughly and carefully tried and with marked ability on behalf of both parties, and nothing has been left undone to fully apprise the Court of every fact necessary to reach a just decision, and to this end counsel on both sides have given their undivided attention in the presentation of testimony and preparation of briefs, and in oral argument, for a period of nearly two and a half years, time as the Master believes well spent in the ultimate determination of questions of great national as well as of great commercial importance.

In addition to the testimony reported to the Court, it has been agreed between the parties that reference might be made to the reports of the several companies annually made to the Railroad &

Warehouse Commission without a transcription thereof and its inclusion with the other testimony herewith reported to the Court, and both parties have made recourse thereto in preparing exhibits in evidence and in submission of the causes for decision.

In obedience to the order of Court the Master submits forms of decree which he recommends to be entered in the three cases, and the same as hereto annexed and made part of this report.

All of which is respectfully submitted,

September 21, 1910.

CHAS. E. OTIS,
Special Master.

379 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,

v.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments of Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference
380 with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Northern Pacific Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainant and the said Railway Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said Acts and Orders are, and each of them is, hereby declared

to be in violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of September 6, 1906 and May 3, 1907, and that they are, and
381 each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906 and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph Michaud, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

382 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

(Consolidated.)

383 *Decree.*

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainants, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Great Northern Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainants and the said Railway Company of their and its property without due process of law and to deny them and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said Acts and Orders are, and each of them is, hereby declared to be in

violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés are concerned, and that said Great Northern Railway Company, its officers, directors, agents and employés, be and they are, and
384 each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of Sepember 6, 1906, and May 3, 1907, and that they are, and each of them is further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906, and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each
385 of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainants recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

386 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,
v.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendant other than the Railroad Company.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, recited in the Bill of Complaint, operate as a burden upon and an interference with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and
387 upon the lines of railway of the Defendant the Minneapolis & St. Louis Railroad Company, and said Acts and Order and each of them are confiscatory and constitute an attempt to deprive the Complainant and the said Railroad Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railroad Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law, and therefore said Acts and Order are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés are concerned, and that said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Order of September 6, 1906, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles

E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railroad Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Order of September 6, 1906, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railroad Company, or any of
388 & 389 its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Order of September 6, 1906.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railroad Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 5. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

390 In the United States Circuit Court, District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al., Defendants.

Exceptions by Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906,
391 and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of

the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S. 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master overruled the contention of the complainant that both the acts of the Legislature and the orders of the Railroad and Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or
inoperative as to all. The acts and orders in question are
392 general in their terms and expressly apply to all railroads
operating in the State of Minnesota and certain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and of each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S. 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on page 67 of the Report (Print. p. 60 in Subdivision VII of said Report), entitled "Real estate valuations as of June 30, 1908," fixing the total value of lands of the Northern Pacific Railway Company in the State of Minnesota as follows:

393 Terminal properties, St. Paul appraisement of Read, Watson and Taylor, as modified by railroad company	$7,645,100.24
Add 5 per cent for cost of acquisition and consequential damages	382,255.01
Property acquired after appraisement	328,725.69
Minneapolis, appraisement of Elwood, Barney, and Ridgeway, as modified by railway company	4,027,616.17
Add 5 per cent for acquisition and consequential damages	201,380.80
Property acquired after appraisement	227,737.26
Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.48
Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85
Total value of terminals	17,315,869.45
Lands outside of terminals	3,708,693.45
Grand Total	21,024,562.90

The evidence contained in the testimony of the witness Thomas Cooper (Record pp. 122, 420, 1059 and 3040) together with the exhibits offered by said witness, and the evidence of the witnesses John D. Stryker (Record p. 454, Comp. Ex. 21—Stryker), L. B. Elwood (Record p. 480, 1024, Comp. Ex. 22—Elwood), John J. Watson (Record p. 508, Comp. Ex. 23—Watson), Fred E. Barney (Record p. 1092), William C. Read (Record p. 1116), Oscar L. Taylor (Record p. 1420), Howard Elliott (Record p. 1217), together with the evidence of Charles Hayden (Great Northern record, pp. 162 to 358 inclusive) and of the said witnesses Taylor, Elwood, Stryker, Read, Watson and Barney contained in the Great Northern Record, the evidence of James J. Hill and John F. Stevens, each and
394 all establish, without competent proof to the contrary, that the fair present value as of April 30, 1908, of the right of way and terminal lands of the Northern Pacific Railway Company in the State of Minnesota is not less than the following sums:

St. Paul Terminals	$9,907,889.34
Minneapolis Terminals	5,292,819.22
Duluth Terminals	5,155,203.75
Right of Way and Station Grounds outside of above terminals	4,944,924.60
Total	25,300,836.91

(See Comp. Ex. 9—Cooper, Revised.)

The Master erred in reducing the values of said lands and terminals as above shown below said sum of $25,300,836.91, for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $25,300,836.91, and there was in the case no relevant or competent proof to the contrary. The evidence shows, without contradiction, that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest, reasonable use for which they are adapted; and the evidence offered by the Complainant above referred to proves that the values placed upon them by Complainant, and the proof offered by him in that respect, are just and reasonable, having reference to such railroad use.

The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Thomas Cooper (Record pp. 211, etc.) shows that in considering the fair value of the right of way and terminal lands of the
395 Northern Pacific Railway Company, five per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said lands for railroad purposes separate consideration of the different parcels of said land was necessary, and a varying range of percentages, according to location and the particular circumstances surrounding each parcel should have been used, ranging from 5 to 40 per cent, as testified to and fully explained by said witness Cooper. The arbitrary addition of but 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent as aforesaid and in not accepting the amounts placed upon said lands as testified to by the witness Cooper after the revision of the exhibits offered by him. (See record, pp. 1059 to 1066 inclusive, Comp. Ex. 29—Cooper and Comp. Ex. 30—Cooper.) The evidence of the witness Cooper, supported by the testimony of the witnesses and by the exhibits hereinbefore referred to, fairly shows the value of said lands, based upon their availability for railroad use, and the Master erred in reducing said figures below that testified to by said witness and shown by evidence contained in said exhibits. For like reason, the Master erred in adding an arbitrary addition of but 25 per cent to the appraisement of the lands of the Northern Pacific Company in the City of Duluth, and in refusing to accept the figures placed thereon by the witnesses above referred to.

IV.

He excepts to that finding and conclusion of the Master on p. 69 of the Report (Print. p. 62) wherein the Master finds as follows:

"He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St.
396 Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions

were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property."

The witness Cooper (Record, pp. 1059 to 1066 inclusive) testified that the reductions made by him in the first place from the valuations put upon the terminal lands in St. Paul and Minneapolis of the Northern Pacific Company by the real estate appraisers were not justified and were made through misapprehension of the elements entering into the fair value of said lands; that upon further consideration, supported by the examination and current sales of contiguous properties, he was convinced that the figures placed upon said lands by the real estate appraisers aforesaid were fair and reasonably low and should not have been by him reduced. The record contains no evidence to the contrary, and the Master erred in not accepting said testimony and the values as originally fixed by the real estate appraisers.

V.

He excepts to that finding and conclusion of the Master found on page 68 (Print. p. 61), under Subdivision VII of said Report, wherein the Master without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid, from $4,944,924.60 to $3,708,693.45 or a difference of $1,236,231.15. The Master, without evidence, arbitrarily reduced the value placed upon said outside right of way lands and station grounds by the witnesses offered by the Complainant to an amount equal to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $4,944,924.60 was the minimum value
397 which, upon evidence, should have been placed upon said outside lands. (Evidence of Thomas Cooper, and Exs. 9, 10, 75, 76 and 77—Cooper.)

VI.

He excepts to that finding and conclusion of the Master found on p. 70 (Print. p. 63), under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul, Minneapolis and Duluth terminals as reduced by the witness Thomas Cooper, in the first instance, and with an addition of only 5 per cent as to St. Paul and Minneapolis and only 25 per cent as to Duluth to cover the cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the clear and undisputed weight of the evidence shows that the modification of the values placed upon said terminal lands of the Northern Pacific Railway Company by said real estate experts was not warranted, and for the further reason that the proof establishes that the addition of the various percentages according to location and condition, ranging from 5 to 40 per cent as made by the witness Cooper to the appraisement of said real estate experts, was the minimum that should have

been added to determine the value of said lands, based upon railroad use, and for the further reason that under the law properly applicable thereto, the Complainant is entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and, when so valued, the appraisement placed thereon by Complainant's proof hereinbefore specifically referred to is the minimum value that can fairly be placed thereon.

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VII.

He excepts to that finding and conclusion of the Master found on p. 77 (Print. p. 69) as follows:

Item 4, Tunnels (Northern Pacific case), amount allowed $253,250.

The Master erred in reducing the amount claimed in that regard by the Complainant, which is $358,363, and in disallowing anything for the Seventh Street Viaduct, so-called, in the City of St. Paul, for the reason that there is no substantial difference between this structure and overhead bridges and like structures which the company will be compelled to reconstruct and maintain and which will probably require repairs, renewals and replacements. The Master erred in assuming that this structure will not require repairs or replacements, and inasmuch as the evidence shows, without dispute, that the City of St. Paul filled Seventh Street to a level above that of the railroad track, creating a permanent condition which will at all times require the maintenance of a tunnel through which the railway lines may pass, the amount claimed on that account should have been allowed, and the Master erred in arbitrarily disallowing it.

VIII.

He excepts to that finding and conclusion of the Master found on p. 79 (Print. p. 70) as follows:

Item 6, Ballast, Northern Pacific case, amount allowed $1,960,969.

The Complainant established by the undisputed proof that the ballast in the Northern Pacific lines in the State of Minnesota would reasonably cost, to presently reproduce, the sum of $2,084,258.49.

399 The Master erred in reducing this amount by applying a price of but 62 cents per cubic yard to the yardage involved instead of accepting the figure of 66 cents per cubic yard, as fully testified to and supported by the evidence offered by the Complainant. Comp. Ex. 83—Darling, showing actual cost of ballasting done by the Northern Pacific during the years 1906 to 1908, shows a much higher price than 66 cents per cubic yard, and the Master arbitrarily disregarded and ignored controlling evidence in reducing such figure to 62 cents without competent proof authorizing or justifying that to be done.

IX.

He excepts to that finding and conclusion of the Master found on p. 83 (Print. p. 74) as follows:

Item 11, Bridges, Trestles and Culverts, Northern Pacific Case, amount allowed, $3,586.053.

The Complainant established by competent proof, undisputed, that there should have been allowed for this item $3,884,745.72. The testimony of the witness Darling, and Comp. Ex. 86—Darling, establishes that the unit prices used by the witness Darling are lower than any of said bridges could have been constructed for on April 30, 1908. The Master erred in reducing said figures in any amount whatsoever, and erred in accepting the mere opinion of the State's engineer, when it appears by his own testimony that he had had no experience in the matter of the construction of bridges qualifying him to express an opinion entitled to any weight as against actual current costs of bridges as shown by said Ex. 86—Darling. The actual average prices per unit shown in Comp. Ex. 86—Darling establish tthe figures claimed by Complainant beyond dispute, and the Master erred in arbitrarily and without justification of any sort in the evidence, allowing but two-thirds of the difference between the figures of the State and of the Complainant.

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X.

He excepts to that finding and conclusion of the Master found on p. 87 of the Report (Print, p. 77) as follows:

Item 37, Contingencies, Northern Pacific case, amount allowed, $3,710,479.

The amount claimed by Complainant is $6,985,585.80, being ten per cent of all items embraced in the schedule, showing the cost of reproduction to April 30, 1908, and the testimony offered by the witnesses Darling, Elliott, Berry, Hill, Stevens and Hogeland clearly supports this claim.

The Master erred in allowing but five per cent on items 1 to 34 of the schedules shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) for the reason that the great weight of the testimony shows that the allowance is wholly insufficient, and the evidence offered by the witness Morgan for the State on that subject shows that he was without any sufficient knowledge or experience to justify the expression of an opinion, and the proof offered by the Complainant required a finding of ten per cent to cover said item.

XI.

He excepts to that finding and conclusion of the Master found on p. 88 of the Report (Print. p. 78) as follows:

Item 39, Interest during Construction, Northern Pacific Case, amount allowed at $7,386,215.

The Complainant established by competent proof that this item should have been allowed at $7,768,868.17. The Master disallowed any item of interest on contingencies and erred in that regard, for the reason that if it is proper to allow contingencies, it is also proper to allow interest on that amount. The amount allowed for Contingencies is because that sum is necessary and will be ex-

401 pended, money to meet contingencies must be furnished, and, therefore, interest thereon should have been allowed. Because

of the erroneous and arbitrary reductions in various of the items in the schedule 1 to 36 inclusive shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) the amount of interest computed and allowed by the Master is also unreasonably and unjustly low; and the Master erred not only in reducing the various items in said schedule, as hereinbefore complained of, but also in refusing to allow any percentage for interest on account of the sum claimed by the Complainant for contingencies.

The Master erred in allowing the rate of interest at 4% only, or at any rate less than 6%, for the reason that under the testimony of the witnesses Elliott and Berry in the Northern Pacific Case, and Hogeland and Hill in the Great Northern Case, it was established that 6% is a just and reasonable rate of interest. The Master reduced the rate of interest to 4% without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes.

The Master erred in reducing the rate from 6% to 4% by reference to Complainant's Exhibit No. 2 in the Northern Pacific Case, for the reason that all of the evidence of the witnesses aforesaid shows that 4% is unreasonably low, and less than money could be procured for during the period of construction. In reducing the rate of interest from 6% to 4% the Master in effect found that during the period necessary for the construction of the lines of the Northern Pacific Company in the State of Minnesota, the money necessary for that purpose could be borrowed at par with 4% interest, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that such money could not be borrowed in any event at less than 6% interest, and it follows, therefore, that an allow-
402 ance of interest at the rate of 6% should have been made, and the Master erred in reducing such rate arbitrarily to 4%. Testimony of Hogeland page 52, Hill page 1269.

XII.

He except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainant comprising the cost of reproducing the Northern Pacific lines in the State of Minnesota as of April 30, 1908, of $101,158,583.13 to $90,204,545 as shown in the schedule contained in the Master's Report on pp. 91 and 92 (Print. pp. 81 and 82).

XIII.

He excepts to that finding and conclusion of the Master found on p. 97 thereof (Print. p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies.

No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases established beyond controversy that the appreciation of roadbed, embankments,
slopes, etc., more than outweighs the minor elements of
403 depreciation which are not fully compensated for from time
to time by maintenance and repairs, and the master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $15,000,000 should have been included. (Testimony Howard Elliott, Record p. 1245.)

XIV.

He excepts to those findings and conclusions of the Master appearing on pp. 100 to 102 inclusive (Print. pp. 89 to 90 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Northern Pacific Railway Company and its predecessors that the investment cost of the system was the sum of $369,252,755, finds that this amount should be reduced by the several items stated in said finding, aggregating $57,009,200, leaving a balance of only $312,243,555, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XV.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

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XVI.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XVII.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein, after finding and recognizing as

matters of value the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather-stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and above the bare value of the physical items comprehended in said property. The Master found in subdivisions numbered 11 and 12, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Northern Pacific Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

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XVIII.

He excepts to that finding and conclusion of the Master found on p. 110 of the Report (Print. p. 97), under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Northern Pacific system, after certain deductions as stated in said report, is the sum of $486,738,161, erroneously assumed to reduce that amount by an arbitrary percentage reduction of seven per cent, placing the valuation of said system at $452,666,489. The Master erred in thus reducing the value of the Northern Pacific system for the reason that there was no testimony justifying said reduction as to the properties of said Company aforesaid, outside of the State of Minnesota, and as hereinbefore shown the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust. As to the property outside of the State of Minnesota, the Master arbitrarily and without any support in the testimony reduced the value of said system seven per cent, or a total of $34,071,672.

XIX.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, State and Interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print. p. 112) of the Report of the Master, the value of the

property of the Northern Pacific Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net
406 return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XX.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print, p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found." For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by
407 Complainant—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXI.

He excepts to the Master's finding and determination found at p. 133 of the Report (Print. p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

For the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the

Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

And he excepts to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXII.

He excepts to that finding and conclusion of the Master found on p. 133 (Print. p. 117) as follows:

"He also finds from the evidence that the cost per passenger-
408 mile in the State passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota,"

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And he excepts to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53.—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXIII.

He excepts to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print. p. 112), entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXI, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXII hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen-
per cent greater than such cost in the interstate passenger
409 business in Minnesota, for the reasons stated in such exceptions, respectively. It is the intention that this exception

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RESULTS IN NORTHERN PACIFIC CASE.

Using Earnings, Operating Expenses, Miscellaneous Income and Taxes shown in Complainant's Exhibits 79, 80 and 80-B Elliott. Division of Operating Expenses between Intrastate and Interstate as per bases shown in body of statement.
Year Ending June 30, 1908.

STATE OF MINNESOTA.

	Intrastate	Interstate	Total
Freight Revenue	$1,555,342.92 – 16.356%	$7,953,734.41 – 83.644%	$9,509,077.33 – 100%
Miscellaneous Freight Earnings divided on basis of revenue	51,428.34 – 16.356%	263,003.68 – 83.644%	314,431.02 – 100%
	$1,606,771.26 – 16.356%	$8,216,737.09 – 83.644%	$9,823,508.35 – 100%
Passenger Revenue	$1,015,150.34 – 34.344%	$1,940,718.17 – 65.656%	$2,955,868.51 – 100%
Miscellaneous Passenger Earnings divided on basis of revenue	191,182.75 – 34.344%	365,487.26 – 65.656%	556,670.01 – 100%
	$1,206,333.09 – 34.344%	$2,306,205.43 – 65.656%	$3,512,538.52 – 100%

Operating Expenses:	Freight	Passenger	Total
Transportation Expenses	$3,118,271.89	$1,089,268.66	$4,207,540.55
Maintenance of Way and Structures	799,320.09	650,372.91	1,449,693.00
Maintenance of equipment	1,257,377.42	410,636.52	1,668,013.94
Traffic expenses	69,804.67	89,524.61	159,329.28
General expenses	98,844.18	71,829.26	170,673.43
Total	$5,343,718.25	$2,311,631.95	$7,655,350.20

Basis for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 3 Interstate ton miles.

Equated Ton Mile Basis

	Actual		Equated	Proportion	Operating Exps.
Intrastate ton miles	130,580,988 × 3.0 =		391,742,964 =	28.965%	$1,547,807.99
Interstate ton miles	960,709,494 × 1.0 =		960,709,494 =	71.035%	3,795,910.26
	1,091,290,482		1,352,452,458 =	100.%	$5,343,718.25

Equated Revenue Basis

	Actual Revenue		Equated Revenue	
	$1,555,342.92 × 2.0882 =		$3,248,201.06 =	28.965%
	7,953,734.41 × 1. =		7,953,734.41 =	71.035%
	$9,509,077.33		$11,196,935.47 =	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 125 Interstate passenger miles.

Equated Passenger Mile Basis

	Actual		Equated	Proportion	Operating Exps.
Intrastate passenger miles	82,317,140 × 1.25 =		85,596,425 =	39.318%	$908,887.45
Interstate passenger miles	100,931,180 × 1.00 =		100,931,180 =	60.682%	1,402,744.50
	183,248,320		186,527,605 =	100.%	$2,311,631.95

Equated Revenue Basis

	Actual Revenue		Equated Revenue	
	$1,015,150.34 × 1.2387 =		$1,257,459.50 =	39.318%
	1,940,718.17 × 1. =		1,940,718.17 =	60.682%
	$2,955,868.51		$3,198,177.67 =	100.%

Divided on basis of earnings { Freight	$9,823,508.35 =	73.661%	
Passenger	3,512,538.52 =	26.339%	
Total	$13,336,046.87 =	100.%	

		Total	Freight	Passenger
Rentals received less rental paid	73.661% of	$241,023.53 } =	$190,926.84	$68,269.81 – 26.339%
Hire of equipment	73.661% of	18,173.10 }		
Taxes	73.661% of	596,118.51 =	139,106.85	157,011.66 – 26.339%

Summary of Results (Valuation divided on basis of Earnings)

	Intrastate	Interstate	Total
Freight Business:			
Earnings	$1,606,771.26 – 16.356%	$8,216,737.09 – 83.644%	$9,823,508.35 – 100%
Rentals and hire of equipment	31,227.99 – 16.356%	159,698.85 – 83.644%	190,926.84 – 100%
	$1,637,999.25 – 16.356%	$8,376,435.94 – 83.644%	$10,014,435.19 – 100%
Operating expenses	$1,547,807.99	$3,795,910.26	$5,343,718.25
Taxes	71,820.32 – 16.356%	367,286.53 – 83.644%	439,106.85 – 100%
	$1,619,628.31	$4,163,196.79	$5,782,825.10
Income applicable to valuation	$18,370.94	$4,213,239.15	$4,231,610.09
Valuation 73.661% of $80,204,545.00	10,867,837.00 – 16.356%	55,577,733.00 – 83.644%	66,445,570.00 – 100%
Annual return	0.169%	7.581%	6.369%
Passenger Business:			
Earnings	$1,206,333.09 – 34.344%	$2,306,205.43 – 65.656%	$3,512,538.52 – 100%
Outside operations	30,133.34 – 34.344%	57,606.41 – 65.656%	87,739.75 – 100%
Rental and hire of equipment	23,446.58 – 34.344%	44,823.23 – 65.656%	68,269.81 – 100%
	$1,259,913.01 – 34.344%	$2,408,635.07 – 65.656%	$3,668,548.08 – 100%
Operating expenses	$908,887.45	$1,402,744.50	$2,311,631.95
Taxes	53,924.08 – 34.344%	103,087.58 – 65.656%	157,011.66 – 100%
	$962,811.53	$1,505,832.08	$2,468,643.61
Income applicable to valuation	$297,101.48	$902,802.99	$1,199,904.47
Valuation 26.339% of $80,204,545.00	8,189,782.00 – 34.344%	15,899,193.00 – 65.656%	23,756,975.00
Annual return	3.641%	5.787%	5.060%
Total Business:			
Income applicable to valuation	$315,472.42	$5,116,042.14	$5,431,514.56
Valuation	19,027,619.00	71,176,926.00	90,204,545.00
Annual return	1.658%	7.190%	6.021%

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $21,493.67, nor any similar losses that would have accrued on Interstate commodity business

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shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to, and excepts to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, viz: (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the intrastate passenger business in Minnesota.

On the valuation found by the Master and apportioned between the freight and passenger business—and intrastate and interstate of each—on the basis employed by the Master in his Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to wit:

(Here follows table, marked p. 409½.)

410 XXIV.

He excepts to the action of the Master in including in the item "Income applicable to Valuation" appearing on the table following p. 143 of the Report (Print. p. 127), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainant to have been erroneously included, for the reason that the items so erroneously included were "net items" and that if the value of said property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net") "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business would be substantially less than that stated in the Report, and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reason aforesaid, the Master erred in stating the computations, tables and results of the business of said Company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Dated October 20, 1910.

411 Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

412 In the United States Circuit Court, District of Minnesota
(Third Division.)

EMMA B. KENNEDY et al., Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

Consolidated.

Exceptions by Complainants to Report of Honorable Charles E. Otis, Special Master.

The Complainants make the following exceptions to the Report of the Special Master, dated September 21, 1910:

413 I.

They except to that finding and conclusion of the Master appearing upon page 17 (Print, p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainants that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake the work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

They except to that finding and conclusion of the Master appearing upon page 19 (Print, p. 18), being Subdivision IV, en-
414 titled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master overruled the contention of the Complainants that both the acts of the

Legislature and the orders of the Railroad & Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S. 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

They except to that finding and conclusion of the Master appearing on page 68 (Print, p. 61) of the Report, under sub-
415 division VII, entitled "Real Estate Valuations as of June 30, 1908," fixing the total value of lands of the Great Northern Railway Company in the State of Minnesota as follows:

St. Paul, appraisement of Read, Watson and Taylor.	$6,433,348.00
Add 5 per cent for cost of acquisition and consequential damages	321,667.40
Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00
Add 5 per cent for cost of acquisition and consequential damages	580,968.15
Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00
Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00
Total value of terminals	19,847,366.56
Land outside of terminals	5,325,284.25
Grand total	25,172,650.80

The testimony contained in the testimony of the witnesses Charles Hayden (Record, pp. 162 to 358 inclusive, Complainant's Ex. 9—Hayden, Complainant's Ex. 10—Hayden), Oscar L. Taylor (Record, p. 359, Complainant's Ex. 11—Taylor), Lester B. Elwood (Record, p. 554, Complainant's Ex. 15—Elwood), John D. Stryker (Record, p. 592, Complainant's Ex. 17—Stryker), William C. Read (Record, p. 602), John J. Watson (Record p. 617), James J. Hill (Record, p. 1232), John F. Stevens (Record, p. 408), Thomas Cooper (N. P. Record, pp. 122, 420, 1059 and 3040), Howard Elliott (N. P. Record, p. 1217), together with the exhibits offered in the Northern Pacific case by the witness Cooper aforesaid, and the evidence in the Northern Pacific case of said witnesses Stryker, Elwood, Watson, Read, Fred. E. Barney (N. P. Record, p. 1092), and Oscar L.
416 Taylor (N. P. Record, p. 1420), each and all establish, without proof to the contrary, that the fair present value as of June 30, 1908, of the right way and terminal lands of the Great Norther Railway Company in the State of Minnesota is not less than the following sums:

St. Paul terminals	$8,041,686.00
Minneapolis treminals	14,524,704.00
Duluth terminals	969,152.00
Right of way and station grounds outside of above terminals	7,100,379.00
Total	$30,635,921.00

(See Comp. Ex. 9—Hayden).

The Master erred in reducing the values of said lands and terminals as above shown, below the said sum of $30,635,921 for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $30,635,921, and there was in the case no relevant or competent proof to the contrary. The evidence shows without contradiction that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest reasonable use for which they are adapted, and the evidence offered by the Complainants above referred to proves that the values placed upon them by Complainants, and the proof offered by them in that respect, are just and reasonable reference to such railroad use. The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Charles Hayden (Record, pp. 177, etc.) shows that 25 per cent added thereto was just and proper to make up the fair present value of said lands, in view of their adaptability for railroad purposes, and erred in fail-
417 ing to find 25 per cent of such appraisement in addition thereto for cost of acquisition and consequential damages instead of five per cent.

IV.

They except to that finding and conclusion of the Master on page 68 of the Report (Print, p. 61) under Subdivision VII as aforesaid, wherein the Master finds the value of the terminals of the Great Northern Railway Company in Duluth as follows:

Appraisement	$713,280.00
Add 25 per cent for railroad value cost of acquisition and consequential damages	178,320.00
Total	$891,600.00

for the reason that the Master erred in failing to add to the appraisement of the dock property of said company at Duluth by Messrs. Stryker, Mendenhall and Little the sum of $25,000 and in reducing the valuation of the Rice's Point property and the Michigan Street property below that fixed by the witness Hayden in his testimony aforesaid, whereby the Master erroneously and without warrant in the evidence reduced the valuation of said lands in the City of Duluth $77,552. (Record, p. 172.)

V.

They except to that finding and conclusion of the Master found on page 68 (Print, p. 61) under said Subdivision VII as aforesaid, wherein the Master, without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid from $7,100,379 to $5,325,284.25, or a difference of $1,775,094.75. The Master without evidence reduced the value placed upon said outside right-of-way lands and station grounds by
418 the witnesses offered by the Complainants, to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $7,100,379 was the minimum value, which upon the evidence should have been placed upon said outside lands. (Testimony of Hayden, p. 162 et seq.)

VI.

They except to that finding and conclusion of the Master found upon page 70 (Print, p. 63) under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul and Minneapolis terminals with an addition of five per cent to cover cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the proof establishes that an addition of 25 per cent to the appraisement of said real estate experts was the minimum that should have been added to determine the value of said lands based upon railroad use, and for the further reason that under the rule of law properly applicable thereto the Complainants are entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and,

when so valued, the appraisement placed thereon by the Complainants' proof, hereinbefore specifically referred to, is the minimum of value that can fairly be placed thereon. (Testimony of Hayden, p. 162 et seq.)

VII.

They except to that finding and conclusion of the Master on p. 75 (Print p. 68) as follows:

Item 2 (Great Northern case), Grading, Clearing and Grubbing, $21,685,802,

for the reason that the Master erred in excluding the following items as stated in said report:

419	Abandoned right of way	$135,876.00
	Extra work not of record	333,775.00
	Total	$469,651.00

The yardage embraced in abandoned right of way was fully explained and supported by the testimony of the witness A. H. Hogeland as only that yardage necessarily handled in the most economical construction of the lines as they presently exist and includes no yardage of right of way of abandoned lines, and therefore the cost of said yardage was erroneously excluded by the Master. The yardage for extra work not of record as disallowed by the Master includes only a portion of the yardage thus computed and shown by the witness Hogeland, and under the evidence, the Master erred in disallowing any portion of said yardage so computed and claimed by said witness. The proof establishes, without contradiction, that the total yardage embraced in extra work not of record, as claimed by the testimony of the witness Hogeland and shown in Complainant's Ex. 3 — Hogeland, and further in the testimony of the witnesses James J. Hill and John F. Stevens, is far less than the actual number of yards moved and put into the roadbed of the lines as they now exist, and there exists on the record no reason nor ground for the action of the Master in arbitrarily disallowing any portion of this yardage. (Testimony of Hogeland, p. 1584, as to abandoned lines; p. 1570 et seq. as to extra work not on record.)

VIII.

They except to that finding and conclusion of the Master as shown on page 78 (Print, p. 70) as follows:

Item 5 (Great Northern case), Cross Ties and Switch Ties, $5,460,809,

for the reason that the proof contained in the testimony of the witness Hogeland in Exs. 2—Hogeland, 13—Hogeland and
420 50—Hogeland establishes that the average price of 70.5 cents per tie, testified to and shown in item 5 of Ex. 2—Hogeland, is below the actual average current cost of track-ties for the year

ending June 30, 1908, or for several years prior thereto. The Master erred in fixing the value of the ties in the Great Northern lines in Minnesota by the figure testified to and shown in the exhibits in the Northern Pacific case, and upon the proof in the Great Northern case erred in fixing the value of its ties at 67.2 cents and erred in not fixing the same at 70.5.

IX.

They except to that finding and conclusion of the Master found on p. 79 (Print, p. 71) as follows:

Item 7 (Great Northern case), Rails, $9,053,977.00.

The Master erred in reducing the price of rails as testified to by the witness Hogeland and shown in his Ex. 2, Item No. 7, from $30.75 per ton to $30.25 per ton. The proof in the Great Northern case established by actual current cost that $30.75 was a just and reasonable figure, and there is no warrant in the record to justify the reduction thereof to $30.25. (Testimoney of Hogeland. p. 27 and p. 116.)

X.

They except to that finding and conclusion of the Master found on p. 81 (Print, p. 73) as follows:

Item 10 (Great Northern case), Track-laying and Surfacing, $2,207,753.

The testimony of the witness Hogeland (Comp. Ex. 7 corrected—Hogeland), together with the testimony of the witnesses James J. Hill and John F. Stevens establishes that the amount claimed in item 10 of Hogeland's Ex. 2 of $835 per mile is fair, just and reasonable.

Complainant's Ex. 7 corrected—Hogeland, showing the aver-
421 age actual cost of track-laying and surfacing for ten years, 1898 to 1908, to be $851 per mile justifies the figure claimed of $835 per mile for the year ending June 30, 1908, and the reduction made by the Master of $75 per mile for the cost of track-laying and surfacing of the Great Northern lines in the State of Minnesota is without warrant in the evidence and has no support therein. The proof offered by the State on that subject is shown by the report to be of no value and is rejected, and in the absence of other proof, that offered by the Complainants from the books of the Railway Company, showing actual current cost, was rejected without just cause. The Master erred in accepting the figure of $760 per mile shown in the Northern Pacific case, for the reason that the actuel current cost as shown by Complainant's Ex. 7 corrected—Hogeland, on the Great Northern lines,is more, and the proof in the Northern Pacific case, as well as in the Great Northern case, shows that the average figure of $760 per mile, stated in the Northern Pacific case, is unreasonably low and that being true, it was unjust to make use of that figure in reducing the amount that should have been justly allowed in the Great Northern case. (See com. Ex. 84—Darling, N. P. case. Testimony of Stevens, p. 443.)

XI.

They except to that finding and conclusion of the Master found on p. 84 (Print, p. 75) as follows:

Item 11 (Great Northern case), Bridges, Trestles and Culverts, $6,664,729.

The difference between the amount claimed in Hogeland's Ex. 2, item 11, of $6,814,201, and that allowed by the Master as above, is $149,472. The testimony of the witness Hogeland (Ex. 2, Item 11) and that of the witness John F. Stevens establishes that the amount of this item as claimed by the Great Northern figures should have been allowed, being based on current cost as of June 30, 1908,
422 as shown by the records of said company, and there was no warrant in the evidence for the Master to arbitrarily compromise the difference between the State figures and the Complaint's figures by allowing the Complainants but two-thirds of that difference. The proof showed that the figures put forth by the State were not supported by credible or competent proof, whereas the figures testified to by the witness Hogeland were amply justified from actual current experience. (Testimony of Hogeland, p. 29. Comp. Ex. 86—Darling, N. P. case).

XII.

They except to that finding and conclusion of the Master found on p. 86 (Print, p. 77) as follows:

Item 30, Engineering, Superintendence and Legal Expenses (Great Northern case), $3,867,040.

This item was arrived at by the Master by taking 4½ per cent on items 1 to 28 inclusive in the schedules of said items in evidence as modified and found by the Master and is less than the amount shown in Complainant's Ex. 2—Hogeland by $498,309. The Master erred in applying the 4½ per cent to items 1 to 28 inclusive and in excluding item 29, Contingencies. Because of the erroneous reductions in the various items 1 to 28 inclusive as hereinbefore complained of, as well as because of the exclusion of said item 29, Contingencies, from said computation, the allowance by the Master for item 30, Engineering, Superintendence and Legal Expenses, is unreasonably low. The great weight of the testimony in this case proves and establishes that 4½ per cent on items 1 to 29 inclusive is low and in no way excessive, and the Master erred, in view of the state of the proof, in reducing the said amount, as claimed. The testimony of the witnesses Hogeland, James J. Hill and John F. Stevens establishes that the amount as claimed is fair; and
423 the action of the Master in reducing it is arbitrary and unsupported by any relevant or competent proof. (Testimony of Hogeland, p. 46.)

XIII.

They except to that finding and conclusion of the Master found on p. 88 (Print, p. 78) as follows:

Item 39 (Great Northern case), Interest during construction, $17,880,150.

The amount claimed by Complainants as shown in Complainant's Ex. 2—Hogeland, and supported by evidence of the witnesses Hogeland, Hill and Stevens, and in the Northern Pacific record by the witnesses Elliott and Berry, is $27,611,471, or a difference of $9,731,321. The Master erred in reducing the rate of interest from six per cent to four per cent, for the reason that under the testimony of the witnesses Hogeland, Hill, Elliott and Berry, it is established that six per cent is a just and reasonable rate. The Master reduced the rate to four per cent without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes. The Master erred in reducing the rate from six to four per cent by reference to the evidence contained in the exhibits in the Northern Pacific case, for the reason that all of the evidence of the witnesses aforesaid shows that four per cent is unreasonably low and less than money could be procured for during the period of construction. The Master erred in refusing to allow interest on item 29, Contingencies, and on item 37, General Expenses, for the reason that if those items are proper to be allowed, as they are, it is because those items and the amounts comprehended in them must be expended from time to time during the progress of the work of construction, and therefore the funds necessary therefor must be furnished and interest thereon must be paid during construction. In reducing the rate of interest from six per cent
424 to four per cent the Master in effect found that during the period of eight years, agreed by the witnesses on both sides as necessary for the reproduction of the lines of the Great Northern in the State of Minnesota, the money necessary for that purpose could be procured at par at four per cent, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that interest computed at the rate of six per cent for an average period of four years on all items excepting equipment and at six per cent for an average period of two years on equipment items, is less than could be accomplished, and therefore it follows that an allowance of interest on the basis aforesaid of six per cent should have been allowed, and the Master erred in arbitrarily reducing the rate to four per cent. (Testimony of Hogeland, p. 52, Hill, p. 1269.)

XIV.

They except to that finding and conclusion of the Master found on page 93 (Print, pp. 82 to 84 inclusive) wherein the Master disallowed Complainant's claim No. 37 in Complainant's Ex. 2—Hogeland, entitled General Expenses 1½ per cent, $1,849,841. The testimony of the witnesses Hogeland, Hill and Stevens, and Elliott, Darling and Berry aforesaid, establishes that during the period of construction money is required to be furnished for general expenses to cover the general administration of the property during the construction period, stationery, insurance, taxes, commissions, organization expenses, accounting and purchasing and treasury departments, and all other expenses that are necessary, and which would not be embraced within engineering, superintendence or legal ex-

penses. The item as claimed covers the cost of the general administration and other items of expense as mentioned for eight years, for which, by the Master's findings, nothing has been allowed. The undisputed proof is that such items of expense are necessary
425 to be incurred, and the Master was without warrant in the record in ignoring and disallowing this item.

XV.

They except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainants, comprising the cost of reproducing the Great Northern lines in the State of Minnesota as of June 30, 1908, of $157,348,856, to $138,425,291, as shown in the schedule contained in the Master's Report on pp. 93 to 94 inclusive (Print, pp. 82-84).

XVI.

They except to that finding and conclusion of the Master found on p. 97 thereof (Print, p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases establishes beyond controversy that the appreciation of roadbed, embankments, slopes, etc., more than outweighs the minor elements of depreciation
426 which are not fully compensated for from time to time by maintenance and repairs, and the Master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $5,000,000 should have been included. (Testimony of James J. Hill, record, p. 1283.)

XVII.

They except to that finding and conclusion of the Master appearing on page 99 (Print, p. 88) wherein the Master finds that the value of the operating property of the Great Northern Railway Company in

the State of Minnesota upon Minnesota's mileage proportion of the market value of stocks and bonds (Ex. 65—Drew) representing defendant's entire operating system, is $147,425,363, and then finds that "of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage," for the reason that the Master erred in finding, without any evidence in support thereof, that any proportion of said amount was predicated upon property not devoted to the public service.

XVIII.

They except to those findings and conclusions of the Master appearing upon pp. 102 to 104 inclusive (Print, pp. 90 to 92 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Great Northern Railway Company and its
427 predecessors, that the cost of said entire system of the Great Northern Railway property devoted to the public service was the sum of $319,681,815, finds this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance by him of eight several items aggregating $24,280,602 leaving a balance of only $295,401,213, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XIX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

XX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XXI.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein, after finding and recognizing as matters of value, the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the
428 aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and above the bare value of the physical items comprehended in said

property. The Master found in Subdivisions numbered XI and XII, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Great Northern Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that from the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

XXII.

They except to that finding and conclusion of the Master found on p. 111 (Print, p. 98) under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Great Northern system, after certain deductions as stated in said report, is the sum of $518,206,215, he erroneously assumed to reduce that amount by an arbitrary percentage reduction of 12 per cent, placing the valuation of said system at $457,121,469. The Master erred in thus reducing the value of the Great Northern system, for the reason that there was no testimony justifying said reduction as to the properties of said company aforesaid outside of the State of Minnesota, and as hereinbefore shown, the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust.

As to the property outside of the State of Minnesota, the
429 Master arbitrarily and without any support in the testimony, reduced the value of said system 12 per cent, or a total of $61,084,746.

XXIII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print, p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print, p. 112) of the Report of the Master, the value of the property of the Great Northern Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and when so divided, the results have been applied by the Master, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainants except to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and except for the same reasons, to the proportionate valuations based upon said total valuation as separated and segre-

gated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainants. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainants except to each and every determination and conclusion reported by said Master in any manner de-
430 rived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XXIV.

They except to that finding and conclusion of the Master found at p. 122 of the Report (Print, p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

for the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by Complainants—will not be sufficient to yield to Complainants and said company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXV.

They except to the Master's finding and determination found at p. 133 of the Report (Print, p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

431 And they except to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

XXVI.

They except to that finding and conclusion of the Master found on p. 133 (Print, p. 117) as follows:

"He also finds from the evidence that the cost per passenger mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And they except to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern Record, pp. 1143, 1171; Chester J. 432 McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

XXVII.

They except to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print, p. 112), entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXV, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXVI hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota, for the reasons stated in such exceptions, respectively. It is the intention that this exception shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to; and they except to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, namely, (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the interstate passenger business in Minnesota.

On the valuation found by the Master, and apportioned between the freight and passenger business—intrastate and inter-
433 state of each—on the basis employed by the Master in his Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to-wit:

(Here follows table, marked page 433½.)

RESULTS IN GREAT NORTHERN CASE

Using Complainant's Exhibits 47 and 48—Martin and 35—Ward, together with reports of Great Northern Railway Co., Minneapolis Western Railway and Duluth Terminal Railway to State of Minnesota as explained in Statement 3-B attached. Division of Operating Expenses, Miscellaneous Earnings, Outside Operations, Rentals, Hire of Equipment and Taxes between Interstate and Intrastate as shown in the body of statement.

Year Ending June 30, 1906.

	Intrastate		Interstate		Total	
Freight revenue	$2,366,350.02	= 15.112%	$13,292,201.05	= 84.888%	$15,658,551.07	= 100%
Miscellaneous freight earnings divided on basis of revenue	42,062.41	= 15.112%	236,275.37	= 84.888%	278,337.78	= 100%
Freight earnings	$2,408,421.43	= 15.112%	$13,528,477.42	= 84.888%	$15,936,898.85	= 100%
Passenger revenue	$1,780,522.02	= 48.083%	$1,920,105.43	= 51.917%	$3,700,627.45	= 100%
Miscellaneous passenger earnings divided on basis of revenue	325,754.66	= 48.083%	351,826.79	= 51.917%	677,581.45	= 100%
Passenger earnings	$2,106,276.68	= 48.083%	$2,271,932.22	= 51.917%	$4,378,208.90	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation expenses	$3,921,805.03	$1,471,759.28	$5,393,564.31
Maintenance of way and structures	1,906,856.44	1,328,835.97	3,234,692.41
Maintenance of equipment	2,084,122.76	681,588.24	2,765,709.00
Traffic expenses	131,311.40	116,530.14	247,841.54
General expenses	148,259.98	101,347.24	249,607.22
	$8,141,355.61	$3,670,056.74	$11,811,414.35

Basis for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 3 Interstate ton miles.

Equated Ton Mile Basis

	Actual		Equated	Proportion	Freight Operating Exps.
Intrastate ton miles	171,317,766 × 3	=	513,953,298	= 20.84%	$1,695,555.50
Interstate ton miles	1,952,436,967 × 1	=	1,952,436,967	= 79.16%	6,444,597.11
	2,123,744,733		2,466,390,265	= 100.%	$8,141,355.61

Equated Revenue Basis

On methods explained in Notes 2 and 4, Statement No. 1

	Actual Revenue		Equated Revenue	
Intrastate ton miles	$2,408,350.02 × 1.4780	=	$3,560,898.42	= 20.84%
Interstate ton miles	13,292,902.05 × 1.	=	13,292,302.05	= 79.16%
	$15,658,961.07		$16,791,200.47	= 100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 125 Interstate passenger miles

Equated Passenger Mile Basis

Intrastate passenger miles	92,053,587 × 1.25	=	115,067,071	= 55.478%	$1,036,075.19
Interstate passenger miles	92,341,552 × 1.	=	92,341,552	= 44.522%	1,633,982.55
	184,395,509		207,408,923	= 100.%	$2,670,056.74

Equated Revenue Basis

	$1,780,522.02 × 1.0486	=	$1,866,327.36	= 55.478%
	1,920,105.43 × 1.	=	1,920,105.43	= 44.522%
			$4,245,434.81	= 100.%

Divided on basis of earnings		
Freight	$15,936,898.85	= 78.6%
Passenger	4,378,908.90	= 21.4%
Total	$20,275,907.75	= 100.%

	Totals	Freight	Passenger
Rentals received	$273,264.23	78.6%	21.4%
Rentals paid	86,994.54		
Net rentals received	$223,239.43		
Hire of equipment received	140,434.47		
	$363,763.90	$285,735.46	$99,031.40
Taxes paid	686,875.11	680,144.19	170,733.92

Summary of Results.

Freight Business:	Intrastate		Interstate		Total	
Earnings	$2,408,421.43	= 15.112%	$13,528,477.42	= 84.888%	$15,936,898.85	= 100%
Proportion of rentals and hire of equipment	54,967.25	= 15.112%	308,765.21	= 84.888%	363,732.46	= 100%
	$2,463,388.68	= 15.112%	$13,837,242.63	= 84.888%	$16,300,731.31	= 100%
Operating expenses	$1,695,658.50		$6,444,697.11		$8,141,355.61	
Taxes	99,761.00	= 15.112%	580,383.19	= 84.888%	680,144.19	= 100%
	$1,795,419.50		$7,005,080.30		$8,801,499.80	
Income applicable to valuation	$668,969.18		$6,832,162.33		$7,499,231.51	
Valuation 78.6% of $138,426,591.00	16,442,200.00	= 10.112%	92,280,079.00	= 84.888%	108,802,279.00	= 100%
Annual return on valuation	4.068%		7.407%		6.893%	

Passenger Business:						
Earnings	$2,106,276.68	= 48.083%	$2,271,932.22	= 51.917%	$4,378,208.90	= 100%
Outside operations	44,446.91		48,095.26		92,542.17	
Proportion of rentals and hire of equipment	47,817.31		51,414.15		99,231.46	
	$2,178,540.90	= 48.083%	$2,371,441.63	= 51.917%	$4,570,082.53	= 100%
Operating expenses	$2,026,075.19		$1,643,980.92		$3,670,056.74	
Taxes	88,421.48	= 48.083%	95,313.45	= 51.917%	170,733.92	= 100%
	$2,122,496.65		$1,737,294.37		$3,840,792.66	
Income applicable to valuation	$55,944.25		$634,849.26		$690,793.50	
Valuation 21.4% of $138,426,591.00	14,243,629.00	= 48.083%	15,378,370.00	= 51.917%	29,623,019.00	= 100%
Annual return on valuation	0.393%		4.129%		2.332%	

Freight and Passenger Business:			
Total income in Minnesota applicable to valuation	$722,913.43	$7,467,111.59	$8,190,025.11
Valuation	30,685,829.00	107,736,449.00	138,422,291.00
Annual return	2.356%	6.931%	5.916%

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $67,301.43, nor a loss of $308,823.43 that would have accrued on Interstate commodity business in Minnesota. (Complainants' Exhibits 32, 34, 36 and 38—Parker.)

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434 XXVIII.

They except to the action of the Master in including in the item "Income applicable to Valuation," appearing on the table following p. 152 of the Report (Print, p. 134), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainants, to have been erroneously included, for the reason that the items so erroneously included were "net items," and that if the valuation of such total property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net"), "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business (assuming as right the total valuation and factor of extra cost as found by the Master) would be only 5.33 per cent. And upon the valuation found by the Master, and the fact that it costs three times as much to produce a ton mile in the intrastate freight business in Minnesota as it does in the interstate freight business in Minnesota, such rate of return on the property used in such intrastate freight business would be only 3.93 per cent, and upon a full and fair valuation of the total property in Minnesota, such rate of return would be substantially less, and that in truth and in fact such rate of return is substantially less than 3.93 per cent in the intrastate freight business of said Great Northern Company; and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reasons aforesaid, the Master erred in stating the computations, tables and results of the business of said
435 company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainants pray that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

ROBERT THORNE,
HALE HOLDEN,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

436 In the United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al., Defendants.

Exceptions by Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16) being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the
437 State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to the one line of railway and not another," wherein the Master overruled the contention of the Complainant that both the acts of the Legislature and the orders of the Railroad & Warehouse Commission, being by their express terms of general application to all railroads doing business in the

State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating
438 in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S., 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on pp. 68 and 69 of the Report (Print. p. 60) in Subdivision VII of the Report, entitled "Real Estate Valuations as of June 30, 1908" fixing the total value of lands of said Minneapolis & St. Louis Railroad Company in the State of Minnesota, as follows:

439

Minneapolis & St. Louis case, amount allowed	$5,999,397.90
Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00
Add 5 per cent for cost of acquisition and consequential damages	227,814.19
Land outside of terminals	1,215,285.00
Grand total	5,999,397.90

The Master erred, without testimony or evidence, in arbitrarily adding only 5 per cent to the appraisement of the terminal lands at Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof shows that in considering the fair value of the right of way and terminal lands in Minneapolis, 5 per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said terminal lands at Minneapolis for railroad purposes, separate consideration of the different parcels of said land was necessary, and a varying range of percent-

ages, according to location and the particular circumstances surrounding each parcel, should have been used ranging from 5 to 40 per cent. The arbitrary addition of only 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent, as aforesaid. (See testimony Thomas Cooper, Record, pp. 211, etc., 1059, 1066, Comp. Exs. 29 and 30—Cooper.)

IV.

He excepts to that finding and conclusion of the Master shown on page 78 (Print. p. 70) as follows:

Item 5, Minneapolis & St. Louis case, amount allowed (cross-ties and switch-ties).....$1,149,829

and especially the deduction of 32,000 ties from the number claimed by Complainant, and the value thereof, at 70 cents per tie.

440 The testimony of the witness Alvin S. Cutler, and Ex. 29—Cutler (See p. 918, etc.) clearly shows the number of ties claimed by Complainant should have been allowed, and there is no testimony in the record sufficient to sustain the finding of the Master that 32,000 ties should be deducted from that number.

V.

He excepts to that finding and conclusion of the Master found at p. 83 of the Report (Print. p. 74) as follows:

Item 10, Minneapolis & St. Louis case, amount allowed (Tracklaying and surfacing), $384,751.

The testimony of the witness Cutler (Ex. 30—Cutler, p. 950, M. & St. L. Record), together with the testimony of the witness Hogeland (See Comp. Ex. 7 Great Northern record), and the testimony of the witness- James J. Hill and John F. Stevens, clearly establish that the sum of $835 per mile is fair, just and reasonable, whereas the Master has allowed only $760 per mile.

VI.

He excepts to the action of the Master in reducing the figures shown in the testimony offered by the Complainant and the exhibits offered in connection with the witness Cutler, on the ground that there is no testimony justifying such reduction, and that the testimony in the case requires findings of value as claimed by the Complainant.

VII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business

on property valuations assigned to each respectively," beginning on p. 127 (Print. p. 112) of the report of the Master, the
441 value of the property of the Minneapolis & St. Louis Railroad Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

VIII.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print. p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

442 For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found,—or upon the full value of the property as claimed by Complainant,—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration

by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

443 Circuit Court of the United States, District of Minnesota, (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

The exceptions hereinafter contained are offered on behalf of defendants, Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson only, and wherever in said exceptions the term "defendants" is used, it is intended to mean only said last named defendants.

444 Now come the defendants above named, and present to Hon. Charles E. Otis, the special Master in the above entitled action, their exceptions to the findings of fact and conclusions of law hereto served by him on counsel for the respective parties as his proposed report herein. As the findings contained in said Master's report in said several actions are similar so far as the rules applied are concerned, counsel will as far as possible, where the application of such rules is expected to state the reasons for the exception but once, such reasons to be taken as applying to each of the cases. Counsel will also endeavor to make their exceptions to the several findings in the order in which said findings are found in the Master's report.

Counsel respectfully except:

I.

To that part of the report of the Master, and the arguments in support thereof found on pages twenty (20) to sixty-one (61) of said report inclusive, wherein certain statements of fact are set forth at great length in reference to the alleged interference between the rates here involved and the interstate rates of the railroad companies concerned, wherein the Master states his conclusions in the following language:

"The facts as found establish conclusively that the State, in the rates prescribed by it, has not kept within the limitations imposed upon it, and has exceeded its constitutional powers, in that such rates constitute a direct interference with and impose a burden upon interstate commerce, and effect unjust discrimination between interstate localities."

This exception is intended to apply to each of the findings upon which the conclusion is based, as well as to the conclusion itself, in each of the cases.

445 Defendants contend in support of this exception, that each of said findings and said conclusion, so far as they find that the rates here involved directly or necessarily interfere with interstate rates, or in any manner exceed the constitutional power of the State, or conflict with constitutional federal authority, are not supported by the evidence and are contrary to law. The federal sovereignty possesses only such powers as were granted to it by the Federal Constitution, and such other powers incidental thereto as may be necessary to make the granted powers effective.

The Federal Constitution gave the Congress exclusive control over all commerce and transportation, beginning in one state and ending in another, but gave it no power over commerce beginning and ending in the same state. The Interstate Commerce Act provides for the regulation of transportation carried on between different states, but provides by its terms that it shall not apply to any commerce, the movement of which begins and ends in the same state. The laws here involved by their express terms apply only to transportation beginning and ending within the state of Minnesota, so that the Federal and State laws operate in different fields and do not overlap or conflict. The Federal Supreme Court has many times passed upon the respective commerce powers of the states, and the nation, and has always adhered to the construction of the Federal Constitution announced in the case of Covington B. C. vs. Kentucky, 154 U. S. 204, where it was stated that the power of the Federal government is exclusive over interstate commerce, and that the power of each state is equally exclusive over its internal commerce. As the laws here involved apply only to business beginning and ending within the state, no railroad company doing business here can apply them, contrary to their terms, to interstate business and then allege its own unwarranted action as a ground for holding the laws void.

446 The constitutional relation between the nation and the states is not elastic. The orbit of each sovereignty is rigidly fixed by our written constitution and cannot be changed except by the people. The law of a state affecting a subject of Federal jurisdiction is void, and a Federal law affecting a matter subject to state jurisdiction is also void. The Federal Employers' Liability Act was held to be void because it applied to the employees of railroads while engaged in handling commerce wholly within a state, Congress having no control over that subject. There is absolutely nothing at variance with former decisions in the case of Western Union vs. Kansas, 216 U. S., cited by the Master as justification for this finding.

A holding that would cripple the commerce power of the states would not enlarge the commerce power of the nation.

II.

Defendants also except to the valuation made by the Master of the property employed in the state by each of the above named railway companies and to the entire plan adopted for fixing such valuation, for the following reasons:

The Master ignored the original investment of the companies as a measure of the maximum value upon which they are entitled to a return, and also ignored the outstanding stocks and bonds of each of the companies though such stocks and bonds exceeded the actual investment. He adopted the so-called "cost of production" as the sole measure of the value of railroad property. There are many bases on which such a speculative valuation could be made. The plan followed by the Master in these cases reduces railroad valuation to a mere exploit of the imagination. Under it, the value of the railroad property can be fixed at any figure which interested parties will swear they believe it to be worth, and if such a plan is upheld by the courts, railroad companies can make the public pay any rates they see fit to charge.

447 The companies start with the fact that lands taken for railroad purposes cost something more than the ordinary market value, on account of what might be called severance damages, which in some cases are small and in others large, the amount depending on the circumstances of each case. They take the total amount of this extra cost, and find what percentage it is of the market value, per acre, of the lands, at the time they were acquired (being generally about 200% of that value) and assume that this severance damage would be the same percentage of present market value of their land if it had to be acquired now, as it was of its original cost.

The other postulates for getting at the cost of reproduction adopted by the Master are:

1. Assume that the railroad is not in existence, but that those things which have resulted from the existence of transportation facilities, the development of the country and the growth of the cities, and present property values, remain unchanged. That under these impossible conditions the railroad company was obliged to acquire its lands now and employ the necessary labor and obtain the necessary ties, lumber and other construction material, and equip the road at present prices.

2. Having found the highest present market value of the lands necessary for right of way, yards, terminals, etc., increase that value by the same percentage of the present value of the land as the severance damages paid at the time of its acquisition, were of its then value.

3. Fix an arbitrary time for reconstructing the road, eight, ten or more, years, and allow interest on the entire estimated cost for half the period.

4. Where the road crosses or runs along a public street where no charge was made by the city, or, as in some cases, the road passes over

bridges or through tunnels constructed by the cities, include the cost of all such structures, and the value of the streets as a part
448 of the value of the railroad. Make no deductions for free rights of way over government lands, or other public donations.

No more potent scheme for the inflation of railroad values could possibly be invented. It sets at naught all the laws of this and other states, against the issuance of watered or fictitious stocks and establishes a watered basis for income irrespective of stocks.

Defendants contend that, as the Federal Supreme Court has often stated, railways are public highways, and that in operating them the railroads are performing a governmental function. That their lands were acquired either as a gift from the government, or by the exercise of the sovereign power of the state; that the right in the lands acquired in either case was the right to use them for the specified public purpose, not for private speculation. The power of eminent domain by which their lands were acquired, is the same power employed by the State itself, when it needs land for public highways, or other governmental purposes, and we contend that land so acquired by a railroad company is just as irrevocably dedicated to public use as if acquired by the State itself, for a public purpose. The only private investment in the transaction is the money actually invested by the railroad company in acquiring the land and in constructing and equipping the road. On the money so invested, but on nothing more, the railroad company is entitled to a reasonable return. The railroads cannot, at the expense of the public, for their own private gain, capitalize by a fictitious valuation, the public highways used by them in carrying on the governmental function which they are engaged in performing.

Defendants, therefore, except to the valuation found by the Master in each case, and to every specific part and portion of such valuation, whether of the whole or of any part of either of the roads involved, and ask that the valuation be fixed at the actual cost of each
449 road as is shown by the evidence, and if in either case such such original cost is not sufficiently shown, that the action be dismissed for a failure of proof on the part of the complainant.

Defendants also invite the Master's attention to the fact that these are not actions brought by the several railroad companies; the actions were brought by the stockholders of the several companies, ostensibly to protect their rights as stockholders. A railroad stockholder has no right in law to claim a return from the public on anything more than the face of the valid stock held by him. At the suit of a stockholder the value found cannot, in any view, exceed the outstanding stocks and bonds.

III.

Defendants also respectfully object and except to the apportionment made by the Master of the value of the property of the various railroads situated in this state, between the passenger and freight business carried on by them. The exception is intended to apply to the method followed in making such apportionment, as well as to the result.

Defendants concede that after the value of the property used in the state by any company has been found, it is necessary to apportion that value between the passenger and freight business, and to reapportion such value between the interstate and intrastate freight business, and the interstate and intrastate passenger business respectively, in order to ascertain the actual value of the property used in the strictly intrastate business of the company, as that is the only business over which the State has jurisdiction.

The original division of that value between the passenger and freight business is somewhat difficult, because the units of production—the ton mile and the passenger mile—do not reflect with exactness the extent to which the property is used in their respective production. Another consideration which is important on
450 this subject is that all the property is not used in common in these two branches of the business. Freight and passenger equipment are almost entirely distinct; while engines are not rigidly assigned to either branch, the relative value of passenger and engine service can easily be determined by getting the engine miles employed in each service, and thus supporting the engine value assigned to the State. Side tracks, and the extensive switching yards and terminal property in the large cities, and such property as Minnesota Transfer, are nearly all freight utilities; their value should be ascertained and assigned to freight business, and only property used in common be divided on an arbitrary basis. The Court has no right to fix the relation of rates, and can only consider whether the property used in intrastate business is, under the laws of the State, allowed to earn such income that confiscation of the property cannot be asserted; but the means for reaching a just conclusion on that subject are made more simple by finding, as nearly as possible, what property is used in the passenger business and what in the freight business.

The error committed by the Master is not so much a matter of misconstruing the evidence, as of adopting an unjust basis upon which to make the computation. There is not, even after having allocated to each branch the value of the property used exclusively therein, a sufficient similarity between the passenger mile and the ton mile to furnish an ideal criterion as to the amount of use made of the property in the production of either. The train service, the revenue and cost, are different as to each. The passenger mile revenue is two cents, in intra business, while the intra ton mile revenue on the Great Northern (53—Ward) is .01381 cents, and on the Northern Pacific (80—Elliott) the intra ton mile revenue is .011910 cents. The difference in unit revenue, while arbitrary, is theoretically founded on the difference in the cost of the service. If the
451 question were one of fixing rates, instead of determining whether the State is guilty of confiscation, the object would be to make such adjustment of the rates that the net profit in each branch would, in proportion to the service rendered, be on a substantial parity. The prime object here is to get at the value of the property assignable to intrastate business, and for that purpose a fair and equitable basis for the division must be found. Revenue is not a just or trustworthy basis upon which to make the division;

the division on that basis would, for many reasons, apportion too great a proportion of the value to the passenger business. If it cost no more to produce a passenger mile than a ton mile, the passenger business at present rates would be unduly profitable, on account of the greater unit revenue. If the apportionment be made on the basis of that revenue, it assigns more to the passenger business than the unit production would justify, even if the rates were properly related. Such an apportionment assumes that freight and passenger unit cost bear the same relation to each other as freight and passenger unit revenue, but that is not true, and the Master has not so found. The Master divided the value between the two branches on a flat revenue basis, but has divided the cost on another basis, which assigns a still greater proportion of cost to the passenger business. The passenger business, therefore, is charged with more than its share of the value of the property, and also with more than its share of the cost.

The revenue basis of division is also inherently wrong in any case where the justness of rates is the question to be determined, because if passenger rates are too high, and the revenue excessive, the value of the property assigned to the business will be accordingly too great; and if the rates are too low, the reverse of this will be the result. If too great value be assigned to the passenger business, too little will be assigned to freight, and vice versa. Lowering the rates on
452 freight would, by this method, increase the value of the property to be assigned to passenger business. While the ton and passenger mile basis of division is not ideal, it has the merit of being stable, and comes very much nearer showing the relative use of the property than does the gross earnings.

Many other tests can be applied for the purpose of verifying the approximate accuracy of the division on the ton and passenger mile basis. The relative value of freight and passenger equipment throw some light on the probable relative use of the property. That relation is nearly the same as the ton and passenger mile relation. Again the passenger car miles, and the freight car miles are a good test of the relative use. That relation differs but slightly from the ton and passenger mile relation. If the passenger engine miles were added to passenger car miles in intra service, and freight engine miles added to freight car miles before making the comparison it might be fairer. The relative train miles would be no basis, because the weight and number of cars in a freight train differ so radically from the weight and number of cars in a passenger train. In the absence of a better basis, we shall insist on the division being made on the relative ton and passenger miles, which would give a very different result from that found by the Master.

IV.

Defendants object and except to the division of the value of the railroad property made by the Master betwen the state and interstate business, both passenger and freight.

Such division should be made in proportion to the use made of the property by each of the classes. The Master has assumed to

make this division also, on the basis of the relative gross earnings, but that basis is clearly unfair to the intrastate business. It appears from the evidence and is found by the Master that the intrastate ton mile revenue in this State is greater than the interstate ton mile revenue.

453 In the Great Northern case (53—Ward) the intrastate ton mile freight revenue is as compared to interstate, as 2.03 to 1. In the Northern Pacific case the relation is 1.43 to 1 (80—Elliott).

Under these circumstances a division of the value of the Great Northern property used in the freight business in this State, between interstate and intrastate on the gross earnings basis assigns to the intrastate business, in proportion to its volume, more than two dollars of such value, for each dollar assigned to interstate. To illustrate, if all the business were freight, and the ton miles of inter and intra business were equal, the intrastate revenue on the Great Northern would be a little more than twice the interstate revenue. A division of the value of the property employed in the business, between the two classes on the gross earnings basis would, in such case, assign to interstate business, and require it to earn a dividend on only one-third of the value, intrastate business would be required to earn a dividend on two-thirds, which would be manifestly absurd.

The same injustice in kind, though somewhat less pronounced in degree, would result from a division of the Northern Pacific value in the State on the gross earnings basis. The Master suggests that it would be no more favorable to the State if the division were made on the basis of the cost of the service as found by him between inter and intra. The truth of that statement is self-evident, because he has found that in the freight business the relation of unit cost intrastate to unit cost interstate is as 2.5 to 1. To divide on that basis would increase the burden upon the intrastate business. The Master finds in the Great Northern case that the intrastate gross earnings are 15.11% of the total freight earnings, but that the intrastate cost is 17.99% of the total State cost. It is clearly better for the intrastate business to be charged with the former percentage of

454 the value of the property employed in the State, than the latter, but neither percentage is right, as a measure of the value to be assigned to intrastate freight. If the gross earnings are to be used at all as the basis of division, they should be properly equated so as to reduce them to a common unit basis.

In the Great Northern case the interstate earnings should be multiplied by 2.03 before making the division; this would bring them to the amount they would reach if the interstate business produced the same ton mile revenue as the intrastate. But even if the revenue were equated to make it represent the same number of units of production, earnings would still be an unsatisfactory and unreliable basis, upon which to make the division of the value of the property, because they bear no fixed relation to the use of the property, in the two classes of business.

Rates and resulting earnings are more or less arbitrary, and may be changed at will, while the relative use of the property in the two classes of business arises out of the natural conditions, which are not subject to material change.

But aside from the instability, the inherent defect in the gross earnings as a basis for the division, lies in the fact that if the earnings upon either class should be too high or too low, the share of the value of the property assigned to it would be correspondingly too great or too small. If interstate rates should be reduced the value assignable to interstate business would diminish with the revenue, and automatically attach itself to the value assignable to intrastate, while there would be no change whatever in the relative volume of the business. If a reduction were made in intra rates, the effect on the value would be reversed. Division on this basis is criticised by the Federal Supreme Court in the case of C. M. & St. P. Ry. Co. vs. Tompkins, 176 U. S. 167.

Division on the basis of cost would not be subject to the fluctuations involved in a division on the gross earnings, and if the unit
455 cost was the same throughout, that would be an unobjectionable basis. But inasmuch as unit cost differs in the different classes, cost could not be used without being equated.

The simple and entirely unobjectionable basis for the division is the unit of use. Between inter and intra freight the ton mile is the perfect and only unit, reflecting, as it does, the two fundamental elements, weight and distance. It is the only basis on which the two classes of freight business can be compared as to volume, and is the only basis upon which the value of the property employed in hauling them can be fairly divided between them.

In the Great Northern case the intra freight ton miles for the year 1908 (Ex. 20—Parker) were 8.07% of the Minnesota freight business. As above stated, the gross earnings of the intra freight were 15.11% of Minnesota freight earnings, and (as found by the Master) the intra freight cost was 17.99% of the Minnesota freight cost. Dividing the value of the property employed between inter and intra freight on the gross earnings basis would require 8.07% of the business to pay a return on 15.11% of the property, making the division on the relation of cost of the service, as so found, would require 8.07% of the business to pay a return on 17.99% of the property.

Dividing the value of the property assigned to the Minnesota freight business by the Master on the different bases mentioned, gives these results:

8.07% is	$8,780,843
15.11% is	16,442,200
17.99% is	19,573,520

In the Northern Pacific case the intra ton miles are 12.33% of the Minnesota business (54—Johnson). The intra gross earnings are 16.35% of the intrastate earnings, and the intra cost, as
456 found by the Master, is 25.362% of the Minnesota freight cost. The value of the property assigned to Minnesota freight, divided on these different bases, gives the following results:

12.33% of the value is	$8,192,738
16.35% of the value is	10,867,837
25.36% of the value is	16,850,596

Revenue which would be ample to pay a reasonable income on the valuation assigned to intrastate freight on the true or ton mile basis, might appear entirely inadequate if applied to the value assigned to that class of business on the false basis of gross earnings, or the still more false basis of the unequated relative cost. The same reasoning applies with equal force to the Minneapolis & St. Louis case.

V.

Defendants object and except to the division of operating expenses between freight and passenger business in the State, and to the method employed in making the division in the Great Northern and Northern Pacific Cases.

The Master divided the value of the property between the two classes on the gross earnings basis, which we insist is unfair to the passenger business, but when the Master assigns the gross operating expenses in the State between the freight and passenger business he adopts an entirely different basis for the division. The gross earnings basis would be unfair but the plan followed is unfairer. Dividing the total cost in the State between freight and passenger on the gross earnings basis adopted by the Master for division of the value would, in the Great Northern case, assign 21.4% of the cost to passenger and 76.6% to freight business. This would make the gross passenger cost in the State approximately $2,500,000.00. The Master has assigned as passenger cost in the State on the Great Northern, $3,670,058.00.

457 A division of the cost between freight and passenger on the Northern Pacific on the gross earnings basis would assign 73.6% to freight and 26.4% to passenger business. This would make the passenger cost on that road for the State approximately $2,050,000.00. The Master assigns to the passenger business in the State on that road $2,311,631.00.

There was a good deal of controversy at the trial between the parties to the action as to the basis for dividing the unallocated operating cost between passengers and freight. Each presented a method of division based on use. The theories employed for determining the extent of the use, however, differed very materially. The railway companies followed a plan the essential basis of which was an apportionment according to the revenue train miles. or the "revenue" engine miles, in the two branches of the business. Some of the items of cost are divided by the companies on other arbitrary bases, but the train mile was the controlling characteristic of their plan. The State contended that a passenger train mile and a freight train mile were so essentially different that they could not be made the basis for correct comparison between the use made of the property in the passenger business and the use made of it in the freight business. It also appeared from the testimony of the railroad witnesses, that about 30% of the engine mileage was employed in switching. There was no serious controversy about the fact that fully 95% of the switching was incurred in the freight business and not over 5% thereof in the passenger business. The State contended, there-

fore, that as to all items of cost divided on the train mile basis, the actual freight train mileage should be increased by adding thereto 95% of the switching mileage, and the passenger train mileage increased by 5% of the switching mileage before making the apportionment. The State contended that if the switching mileage was not taken into account in this way, that apportioning the cost on the train mile basis would impose on the passenger business very
458 much more than its share of all the items of operating cost apportioned on that basis. That the State's claim was well founded is demonstrated by the fact that the apportionment made by the railway companies, which was adopted by the Master, imposed upon the passenger business a greater proportion of the total cost than would be imposed upon it by the manifestly unfair gross earnings basis.

The plan adopted by the Master was shown to have been approved by the Interstate Commerce Commission, but that soon afterwards such approval was withdrawn. The discrediting of the method by the Interstate Commerce Commission was presumably because of its inherent unsoundness.

We insist on the division made by the State, or at least that the division be no more unfair than the gross earnings basis.

VI.

Defendants object and except to the finding of the Master as to the relative cost of doing intrastate and interstate freight business.

The finding of the Master that the relative cost of doing intrastate freight business in Minnesota is two and one-half times the cost of handling interstate business, is not only wholly unjustified by the evidence, but it is in conflict with the findings in every other case on the subject, reported in the books. Passing the finding on that subject in the Ames case, which on account of the very peculiar language used by the witness for the State, whose testimony was followed, makes the case inapplicable here, we find the two cases which have been tried on the merits in the Circuit Court, are the Keyes case in North Dakota and the Missouri rate cases.

It is not easy upon a casual reading to understand just what Judge Amidon intended to find as to the relative cost of doing the intra business in that state as compared with inter, but a careful analysis of his decision shows that he intended to find, and did find,
459 that the extra cost was to be found only in the items regularly grouped by the railroads under the head of "conducting transportation." That cost, he held, was twice as great for the intra business as for all business. After stating that the evidence before him on this question was wholly uncontradicted, he said:

"Many witnesses were called by the plaintiffs to testify in respect to the relation of cost to revenue in the case of local business as compared with the entire business of the companies. By none of them is the expense of conducting transportation placed at less than twice as much in the former case as in the latter. Mr. Earling, General Manager of the Milwaukee road, a person of great experience

and apparent candor, stated, that the total cost of conducting local business on the entire system of that road was at least twice as great as for through business, and that in sparsely settled communities like North Dakota where traffic is light, such cost was four or five times as great in the one case as in the other."

After finding on this testimony that intra, as to the haul, cost twice as much as inter, he further said:

"The operating expenses of a railway consist of two principal items: (1) cost of maintenance of plant; (2) Cost of conducting transportation. The former item is constant, and can justly be divided between the different kinds of traffic in proportion to their volume.

As to the second item, however, such a division cannot properly be made; for it is agreed by all who have occasion to consider the subject, railroad commissioners as well as railroad officials, that the cost of conducting transportation, is relative to revenue much higher for local business than for the general business of a road."

What Judge Amidon actually found, therefore, from the undisputed evidence on the subject before him was that all the operating expenses, except those included under the head of "conducting transportation" should be divided between interstate and intrastate business in proportion to their volume, but that the expenses included under the head of conducting transportation were twice as great for intra as for all business.

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In applying his finding he failed to give intra business credit for its extra unit revenue, and for that reason fell into the common error which runs through all the cases. He found "conducting transportation" was 30.25% of the revenue on the Great Northern road.

He also found the average operating per cent in the State on the Great Northern was 60.82%.

He considered that the 30.25%, being the percentage of revenue consumed in the cost of "conducting transportation" was included in the operating per cent, but in order to double it, it should be added again.

He found the reduction in intra rates made by the State was 13.00%. He then added all of these percentages together.

Average cost of operation in State	60.82%
Extra cost, local	30.25%
Reduction by State	13.00%
	104.07%

Omitting to credit intra business with its intra unit revenue, and assuming that the unit revenue on inter and intra was the same, the above process showed that it would take 104.07% of the revenue to pay operating expenses on intra business.

The intra ton mile revenue in North Dakota, was, very likely, as it is in other states, twice the inter ton mile revenue, so that 100% of the inter ton mile revenue might not be more than 50% of the intra ton mile revenue.

Without further discussing the incorrectness of Judge Amidon's conclusion, we desire to especially emphasize the fact that he found the extra cost intra was confined to haulage items, and that as to those items the intra business cost was twice as much as all
461 business. As "conducting transportation" in that state comprised just about one-half of the total operating cost, the effect of his finding was to double one-half the inter cost and divide the residue of the operating cost between inter and intra equally, per ton mile. This agrees, in result, with Judge McPherson's finding in Missouri, that the intrastate cost is 50% more than inter.

Judge McPherson also failed to give intra business credit for its greater ton mile revenue, but charged it with the greater ton mile cost. The Master's decision here is the first decision in which the extra intra ton mile revenue is recognized. It is not the first case in which the intra ton mile revenue was shown to be greater than inter ton mile revenue. It appeared clearly in the Missouri cases, but was overlooked by the Court. Ton mile revenue for intra is greater everywhere, because of the relative average shortness of the haul, and the higher rates per ton mile which short haul business always commands, in every schedule. In ton miles produced over short hauls the element of weight predominates, and in ton miles produced over long hauls the element of distance predominates. Twenty-five tons carried 1,000 miles makes 25,000 ton miles. It takes 2,500 tons carried ten miles to make 25,000 ton miles. The miles are a hundred times greater in the first instance, and the tons are a hundred times greater in the second. The greater revenue producing ability of the ton miles wherein the weight is the predominating factor is that while rates per hundredweight increase with the distance, the increase is not fixed in proportion to the distance.

The rate for a haul of any given weight for ten miles is very much more than one-tenth of the rate for a haul of the same weight for one hundred miles. A given number of ton miles produced under any proper schedule of rates, will show very much less revenue where the haul is long than where the haul is short. The
462 most profitable business per ton mile is that in which the weight instead of the distance predominates in making the ton miles.

The Master found in these cases, in accordance with the undisputed evidence, that the intra ton mile revenue was greater than the inter ton mile revenue; if, therefore, the relative cost of doing the intra business was no greater in this State than in North Dakota or Missouri, it conclusively appeared that the rates involved were more remunerative than the interstate rates. On the subject of relative cost, the Master rejected the testimony of the State's expert, taken from the company's books, and considered only the testimony of the railroad witnesses. Their evidence was mere opinions, not founded on any fixed basis of accounting or mathematics, ranging widely between maximum and minimum limits.

The Master evidently did not consider himself bound by the adjudications of other courts above referred to. Unless the extra ton mile cost in this State for intra was found to be even greater than

it was found to be in other states to absorb this extra ton mile revenue, the defendants were entitled to judgment in their favor.

The Master found the relative cost here to be greater than it was ever found to be anywhere.

In the Missouri cases, there was much evidence of the same tenor and by the same witnesses who testified here, as to the relative cost of the service. Mr. Elliott and Mr. Gray of the Northern Pacific and Messrs. Doddridge and McPherson all testified there substantially as they did here, Mr. Elliott even going to the extent,—as he did here,—of saying that he was not comparing inter and intra business, but was comparing through and local business.

Two witnesses testified for the State in Missouri on the same subject, the expert accountants employed by the State claiming that there could be no extra cost for intra business outside of
463 train movement items, and that the relative excess confined to those items was less than 50% per ton miles. On all of this testimony, Judge McPherson found that the extra cost of intra freight was 50%. This, so far as the extra burden on intra business is concerned, was equivalent to holding that the cost was 2 to 1 on haulage items. It can't be said that Judge McPherson showed any disposition to be unfair to the railroads, and no doubt his finding established as high a ratio of excess cost for intra business as he felt the evidence warranted. His language was:

"The expense of doing the state business over interstate is greater for carrying freight by at least fifty per centum, and at least twenty-five per cent for carrying passengers."

The Arkansas and Oklahoma cases where the relative cost was fixed at 2 to 1, were each submitted on affidavits, and no doubt the decisions were in accordance with the testimony there before the Court. No distinction was made in the latter cases between haulage and non-haulage cost.

If it is true that this matter of relative cost of doing inter and intra business is the one subject in the business world as to which the modern method of cost accounting is impotent and mathematical deductions—approximately accurate, like the division of income and cost between states—are impossible, it must at least be true that the courts are not going to treat the relative cost as an uncertain element, with no limits as to its variability, to be arbitrarily found and differently applied in each case according to the number of expert witnesses that may be called to express opinions upon it.

The relative cost of doing the inter and intra business is necessarily stable and subject to but little change in the same state, or in different states, from year to year. To say that the disparity in cost is greater in Minnesota than in North Dakota is absurd; that it is greater in Minnesota than in Missouri is unlikely.

464 The finding made in these cases was not made on different or more satisfactory testimony, because, as before stated, the witnesses were largely the same here and in Missouri, and in the North Dakota case the railroad testimony was uncontradicted.

In these cases there was placed before the court the most complete analysis of all the differences in the relative costs referred to, and

from the data taken from the companies' records an absolutely concrete mathematical calculation was produced showing the relative cost of through and local business, and by a process of equating, the relative cost of inter and intra, showing the extra cost as applied to all expenses, to be less in the Northern Pacific case than 1.50 to 1 and in the Great Northern case a little more.

In these cases there is not a word of testimony that would justify a finding of any extra cost, except as to haulage items. Mr. Johnson, Assistant Controller of the Northern Pacific, whose statement as to relative costs is the fullest and clearest, carefully limited his testimony to train movement items only.

His testimony on this subject appears at page 4119, et seq., of the Northern Pacific Record. He had said in his affidavit on the preliminary hearing:

"In the opinion of this affiant, the cost of hauling freight, included in the classes of business local to the state, exclusive of all other service, is about two and one-half times as much as the cost of hauling through freight, in through trains."

When on the stand as a witness he was asked whether he still believed the statememnt in his affidavit was true. He said:

A. Yes, sir; hauling, I want to emphasize the word hauling; it does not speak of all operating expenses.

Q. No, it speaks of hauling?

A. Yes, sir.

Q. With that exception, the statement contained in your affidavit is true?

A. Yes, sir; that it costs at least 2½ times for the haul."

465 When asked whether there was any reason why the apportionment of the other operating expenses, outside the haulage or train movement cost, between inter and intra, should not be charged in proportion to volume, he answered (P. 4120).

"In making the investigation we never went beyond the cost of the haul. * * * I think that in the merchandise hearing before the Commission, Mr. Gray, the Comptroller of the Northern Pacific, stated, that he didn't make any attempt to go beyond that point; that the other factors were such as to leave the question a very open one, as to what should be charged and what should not be charged, and what the proper basis should be."

It appears from the language used, that Mr. Johnson was comparing through and local business, not inter and intra business as distinct classes. The same thing is true of the testimony of Mr. Hill and Mr. Elliott. But Johnson was clear and emphatic as to the part of the service in which the extra cost arose.

The language employed in Johnson's affidavit, upon which the above cross examination was based, is a fair sample of the ingenious phraseology employed by railroad counsel and witnesses throughout on this subject. The cost of hauling "through freight on through trains" was made the standard of comparison. Mr. Johnson is made to say that,

"The cost of hauling freight included in the classes of business local to the state, exclusive of all other service, is about two and one-

half times as much as the cost of hauling through freight on through trains."

This is not a comparison of the cost of intra and inter business. "The classes of business local to the state" are exactly the same in general character, as the interstate business.

The agricultural products of the State are nearly all marketable in our cities, and the commerce between the manufacturers and merchants of the Twin Cities and (Duluth and the smaller cities
466 and rural communities of the State is not different in character from the commerce between the people of this State and the cities of St. Louis, Chicago and New York. The peculiar language quoted, therefore, was used not to indicate any peculiarity in the character of the merchandise hauled, but to distinguish the kind of service. The complaint alleges that there is no difference in character between their intra and inter business. There are but two kinds of trains used in hauling freight, and, as respects the haul, but two classes of freight. The companies run through trains extending generally without stop between terminii of divisions, and local trains, stopping at all intermediate stations to deliver and take on business. Business carried on through trains is, as to haulage cost, carried at the least expense, and that carried on local trains is, as to haulage cost, necessarily more expensive. There is no "long haul" local train service and no "short haul" through train service.

The local business, that is the business carried on local trains, is frequently called short haul, and the through is called long haul business. If the terms long haul and short haul were to be used as meaning anything different from through and local, it would be necessary to have some criterion based on length of haul, by which to distinguish them. If mere length of haul was to be considered, it would be necessary to designate some distance at which business would cease to be short haul and become long haul, otherwise there would be hopeless confusion. But mere distance is not what determines the unit cost of the haul. The unit cost depends on the kind of service. The companies classify their business as they receive it according to the service it is to receive, and that classification and service is what determines the unit cost of the haul.

All freight received by a railroad company at its terminals, or at any divisional point, is sorted into two classes regardless of whether it is inter or intra. That destined for points at or beyond
467 the next division terminal is set over into one class for transportation on a through train, and that destined for points within the terminii of the division is set over into a class to be forwarded on a local train. This sorting is constantly going on, it is repeated at every divisional point as to both car load and less than car load lots. Business that goes on a through train over one or more divisions and is not destined for a divisional point, changes trains, and is carried on the last division from the division terminus to its destination, on a local train. Such a shipment is through business, or "long haul," so far as it is carried on a through train, and is "local business" or short haul so far as it is carried on a local train. The companies thus make the natural classification, and there is no room

for any other. The local train service as to haulage is more expensive than the through train service, and in determining the cost of doing any class of business, the question always is, which service did it receive? The cost of hauling freight on a through train over two divisions of say 250 miles in the aggregate, is necessarily less per ton mile than the cost of hauling freight on a local train say 10 miles. In the particular instance the cost per ton mile for the shorter haul might be three or four times as much as the cost per ton mile for the longer haul. But all that is taken care of in the rate schedules. 100 tons hauled 250 miles would make 25,000 ton miles. If we take the actual weight of the shipment and apply to it the first class merchandise rate of the schedule in controversy, for a 250 mile haul, it will give a revenue for the service of $1,102.40. If we take 25,000 ton miles produced over a haul of 10 miles, and apply to this weight the rate in the schedule in controversy for the ten mile distance, we get a revenue on the 25,000 ton miles of $6,490.00.

For the same number of ton miles in this instance, the short haul would produce a revenue per ton mile nearly six times as great as that produced on the long haul.

468 Therefore, when the railroad witnesses wander from the classification of their freight business into through and local which, is in truth and fact, the long haul and short haul business, and undertake in their testimony to speak of the "long haul" and "short haul" business in the abstract, they can keep within the bounds of truth and yet make their evidence very deceptive, by comparing the extremely short haul local train business with business carried on through trains. The disparity in cost per ton mile may be considerable, but the disparity in ton mile revenue is equally great or greater, because all schedules provide a greater unit revenue for short hauls. All schedules are so made in recognition of the fact that for short haul distances the unit cost is greater. The railroad witnesses always forget to mention the greater ton mile revenue for the short haul.

There is little traffic over distances of ten miles to produce revenue or incur cost, and as distance increases the tendency is towards a leveling of both the unit cost and the unit revenue. The extreme comparisons, therefore, made by the railroad witnesses mean nothing. There never can be, however, a complete leveling of the unit cost and unit revenue of local business as compared with through business. The differences are actual, inherent and permanent, and the intelligent consideration of the question of relative cost requires a determination of the relative volume of inter and intra business that receives the more expensive service on local trains, and the less expensive service on through trains.

On this subject, in those cases there is no contradiction of the testimony of Mr. Hillman, which shows (Hillman Ex. G-5, G. N. case) that much less than one-half of the business handled on local trains is intrastate. More than sixty per cent of local train business both carload and l. c. l. is interstate. In ton miles about one-tenth of the interstate business receives the more expensive local

469 train service, but in volume of traffic—actual tons—about one-fourth is so carried. The interstate tons carried on local

trains, as compared with intrastate so carried, are about 3 to 1, while the relation of inter to intra ton miles is about 2½ to 1.

Investigations made in Missouri, by taking for comparison all the business done for different fixed periods on different roads doing business in that State, testified to by the railroad witnesses Doddridge and Peabody in the Missouri rate cases, fully uphold Hillman's deductions as to the relative volume of inter and intra carried on local and through trains here. That is why Hillman's testimony on the subject was not contradicted.

The importance of this aspect to the question arises from the fact that local train service is the only factor of extra cost that can be attributed to intra business in order to claim that, as a class, it is more expensive than the inter.

So far as "two terminal charges" are concerned, they are very adequately taken care of in the terminal allowance in the rates in controversy.

When it appears, therefore, as it does here, that the extra cost of local train service, instead of being all charged to intrastate business, must be charged between the two classes more nearly in the relation of three parts to interstate, and one part to intrastate, it very materially affects the question of the relative cost of doing the business. The other fact which affects the question directly is the proportion of intrastate business which receives the less expensive through train service.

This large volume of interstate business receiving the local train service, raises the cost of doing interstate business considerably above the cost of through train business, and the part of the intrastate business handled on through trains reduces the average cost of intrastate business below the cost of local train service, so that when we compare the two classes as a whole the cost gap between them is very much narrowed.

470 In the face of this situation the statement made by the Master at page 129 of his findings that:

"By far the greater volume of state business belongs to the more expensive short haul class:"

is no justification of his finding as to relative cost. The statement is only a half truth because it does not suggest that a very much greater volume of the interstate business (though a less proportion of the whole) belongs to the same class, and that, therefore, interstate business, as a class, must be charged with the greater part of the extra cost. The Master's statement carries an implication that the extra cost of local train service should be mainly charged to the intra business because so great a proportion of it belongs to the class which receives that service, and that no considerable part of such extra cost is chargeable to interstate business. Common sense, as well as the testimony of all the witnesses in these cases, proves that it is the character of the service, and not the character of the shipment—as inter and intra—that determines the cost; and it follows that each class should be charged with its share of the extra cost, in proportion to the relative quantities of each receiving the more costly service.

Mr. Elliott and other witnesses showed that extending the length of a through haul over more than one division does not lessen the ton mile cost. Mr. Elliott said, that circumstances being equal, the cost per ton mile of hauling a given quantity of freight would be duplicated on every division over which it passed.

To call attention to the relative length of haul on inter and intra business means nothing, unless it is accompanied by a statement as to how much of the distance it received the less expensive, or the more expensive, service. All business carried on through trains (unless it originates at or is destined for a division terminus) receives both kinds of service. It is either hauled from an intermediate station to a division terminal, and there taken onto a through train and carried by that service as far as possible; or having been carried as far as possible on a through train it is set out at the end of the division nearest to its destination, and there picked up by a local train and carried to its destination at some intermediate station.

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It may have local service at both ends of its trip, and most "through" business must have local service at one end or the other. The class of business which, for the entire length of its haul, gets through train service is necessarily very small. When we talk about through business, therefore, we simply mean all business while carried on through trains, and not that there is a considerable class of business which gets exclusively through service.

It appears from the testimony of all witnesses on both sides, that the greater cost of handling short haul or "local train" business arises solely out of the difference in the character of the haul—the greater time taken, the greater amount of fuel and lubricants consumed, and the greater amount of work in handling the business on the part of train crews and station employees, and the numerous items grouped by all the roads under the grand division of operating expenses known as transportation expenses. Outside of those items there can be no extra cost in handling the business which receives local train service.

The "haul" is invariably given by witnesses as the cause of the extra cost. The "short haul" business is what is claimed to be more expensive. It is clear therefore, that whatever the extra cost is, it applies only to the haul or to the cost of conducting transportation, and does not apply to the other grand divisions of operating expenses, which have no relation to the haul.

The Master's finding that the excess cost intra per ton mile is 1.50%—not limited to haulage charges but applied to all operating expenses—makes the amount of extra expense wrongfully charged to intra business very large. For example, on the Northern Pacific for 1908 the "transportation expenses" (79—Elliott) are 58% of the total operating expenses. If the excess ton mile cost for intra, found by the Master were limited, as it should be to this part of the operating expenses, it would mean that 42% of the total freight expense should be apportioned between the two classes in proportion to their volume, as held in Judge Amidon's decision, and that 58% of the expenses should be apportioned per ton mile on

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the relation of 2.5 to 1. This would make the relation of all intra expenses to all inter expenses per ton mile as 1.87 to 1, considerably higher than the excess charged to intra in North Dakota and Missouri, and much higher than the excess cost found by Hillman.

On the Great Northern for 1908, the freight "Transportation Expenses" (47—Martin) were 48% of the total operating expenses, so that 52% of the expenses should be apportioned equally per ton mile, and 48% of the expenses should be apportioned on the basis of 2.5 to 1. On the basis of all expenses the relation would be 1.62 to 1.

If the amount of extra cost put upon the intra business by the Master's finding here was confined to the haulage charges alone in which it occurs it would amount substantially to a finding that the intra ton mile haulage charges are five times the inter ton mile haulage charges.

The difference in the cost found by the Master is made a fixed percentage of inter cost, regardless of the differences in the unit revenue per ton mile, the average unit cost, or the inter unit cost obtained by equating the ton miles; and regardless also of the proportion of the operating expenses incurred in conducting transportation. These differences necessarily affect the relation, and they are very marked between the Great Northern and the Northern Pacific. On the
473 Great Northern only 48% of the operating expenses were incurred in 1908 in transportation cost, while on the Northern Pacific the percentage was 58.

On the Great Northern the unit revenue intra (53—Ward) was	.01381 cents.
On the Northern Pacific (80—Elliott) it was	.01191 cents.
On the Great Northern the inter unit revenue, 1908 was	.00661 cents.
On the Northern Pacific it was	.00827 cents.

In the face of all these differences the relative cost of intra and inter business was, according to the Master, exactly the same.

Defendants also object and except to the finding that the cost of handling intrastate passengers is 15%, or any other per cent greater than the cost of handling interstate passengers.

VII.

Defendants object and except to the finding of the Master that the rates, and each of them, as applied to each of the roads involved, are confiscatory, for the reasons:

1. That upon a fair and reasonable valuation of the property of each company in the State, and a fair and reasonable division of the value of such property between freight and passenger business, and between the inter and intra business, would show that said rates, and each of them, would be entirely compensatory as to each of the roads involved.

2. As to the Northern Pacific Company, because the complaint in said action does not claim confiscation, except so far as the rates here involved affect interstate rates.

3. Because the complaints in each of the actions declare that at the time the rates involved were prescribed, the interstate rates of the company in Minnesota were fair and reasonable, and
474 the evidence in this case shows as to the freight business that the net intra ton mile revenue is greater than the net inter ton mile revenue.

VIII.

Defendants object and except to the finding of the Master that the dividends received by the Great Northern and Northern Pacific Companies from the Express Companies owned by each of said railroad companies respectively, and for which said railroad companies perform all of the said transportation, should not be reported as income.

Attached hereto is a more particularized and specific specification of the exceptions of defendants to the various findings contained in the Master's report.

We object and except to the matters in said report particularly stated, as well as to others not so particularly pointed out, as follows:

In Subdivision V, Relating to Interference with Interstate Commerce.

1. On page 16 of the Report, the findings that "the reductions in rates which may be charged by railroad companies for intrastate transportation within the State of Minnesota so made by its legislature and commission and challenged by these suits, are briefly as follows:

"Reduction in rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commission's order of September 6, 1906.)

"Reduction in rates on grain, lumber, live stock and coal amounting to 7.37 per cent. (Session Laws of 1907, Chap. 232.)"

should be modified as follows: It should be made clear also that the reduction in rates there specified was a reduction in the maximum rates, which might be charged for the particular merchandise,
475 commodities or passengers, and not the percentage of reduction in the general revenue of the road received for business in Minnesota, nor the percentage of reduction in revenue received from the aggregate of the particular merchandise, passengers or commodities transported, and to which the rates apply.

2. On page 21 of the Report, the Finding or Statement of Opinion that "It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital importance to the continued existence of the Company as a going concern."

3. The Finding or Statement, on page 23 of the Report, in No. 2, that "The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first sec-

tion of the act, as follows: 'Provided, however, that the provision of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid.'" There should be added to this Finding—"Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State."

4. The Finding or Statement of Opinion, on page 30 of the Report, in No. 4, that "It always has been and is impracticable, and apparently is impossible, to operate the property of either of said companies situate in any State separately or to carry on transportation of passengers or freight local to a State separately from interstate passengers or freight touching that State." The evidence does not justify this.

476 5. The Finding, on page 31 of the Report, in No. 5, that "By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the State of Minnesota is interstate." This Finding should be modified by showing the ton miles of freight local to the State for that year and the ton miles of interstate freight touching the State during that year and the passenger miles inter and intrastate within the State for the year.

6. The Finding or Statement of Opinion, on page 31 of the Report, in No. 6, that "For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of the commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a State, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maguire's testimony, G. N. Case, pp. 792 to 795.)" The evidence in the case does not justify this.

7. The Finding or Statement of Opinion, on pages 31 and 32 of the Report, in No. 6, that "Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equitable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining State, and each of them still maintains such equable basis of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within

477 Minnesota or interstate between Minnesota and an adjoining State." The evidence in the case does not justify this.

8. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, that "Any substantial change in the basis of rates or

in any particular rates due only to the fact that the transportation was interstate or that it was local to a State would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the State of Minnesota and traffic which goes between the State of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p. 1320-1, and Baird, p. 2198-9.)" The evidence in the case does not justify this.

9. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, with reference to Superior, Wisconsin, and Duluth, Minnesota, that "Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates."

10. The Finding or Statement of Opinion, on pages 32 and 33 of the Report, in No. 7, with reference to the cities of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, that "Any substantial difference in rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city." The evidence does not justify this.

11. The Finding or Statement of Opinion, on page 33 of the Report, in No. 7, that "Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and
478 points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior." The evidence does not justify this.

12. The Finding or Statement of Opinion, on pages 33 and 34 of the Report, in No. 8, that "If these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and adjoining states, the result would have been serious discrimination against localities in the neighboring states."

13. The Finding or Statement of Opinion, on pages 34 and 35 of the Report, in No. 9, that "These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities." The evidence does not justify this.

14. The Finding or Statement of Opinion, on page 38 of the Report, in No. 10, that "Maintaining rates, comparison of which shows this result, involves substantial, undue and unjust discrimination in fact against the interstate localities."

15. The Finding or Statement of Opinion, on page 38 of the Report, in No. 11, that "Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of
479 the locals based on the state line would have involved undue and unjust discrimination in fact." The evidence does not justify this.

16. The Finding or Statement of Opinion, on page 40 of the Report, in No. 12, that "Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line." The evidence does not justify this.

17. The Finding or Statement of Opinion, on page 41 of the Report, in No. 13, that "The Northern Pacific Company cannot maintain its present commission-made rates between its eastern terminals and Moorhead and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations." The evidence does not justify this.

18. The Finding or Statement of Opinion, on page 42 of the Report, in No. 14, that "Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota, and an unjust and undue preference and advantage in fact for St. Paul." The evidence does not justify this.

480 19. The Finding or Statement of Opinion, on page 43 of the Report, in No. 15, that "The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either State or interstate between them. If unjust and undue preference or advantage is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern companies have, prior to the taking effect of the Order, maintained an equitable basis of rates in the territory which these two states compose without regard to state lines"—also the Finding in this connection, that "The interstate rates from Minnesota westerly into North Dakota have been the same as for Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify

a different basis of rates for east bound than for west bound transportation." The evidence does not justify this.

20. The Finding or Statement of Opinion, on page 44 of the Report, in No. 15, that "This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota." This is not justified by the evidence.

21. The Finding or Statement of Opinion, on page 44 of the Report, in No. 16, that "Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in face." This is not justified by the evidence.

22. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and dif-
481 ferent classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the State of South Dakota the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the State of Minnesota." This is not justified by the evidence.

23. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the State of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates."

24. The Finding or Statement of Opinion, on page 47 of the Report, in No. 18, that "Substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists and constitutes undue and unjust discrimination in fact."

25. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distanbes should be the same, and if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls and for the same distance westerly of St. Cloud." The evidence does not justify this.

26. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Such disparity depends only on the fact that in the case of the higher rates the state boundary line is
482 crossed and on no other condition whatsoever, and it constitutes undue and unjust discrimination in fact not only against

the shipper at Fergus Falls, but as well against the consumer in the North Dakota towns in question." This is not justified by the evidence.

27. The Finding or Statement of Opinion, on pages 49 and 50 of the Report, in No. 20, that "Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the companies or at Superior, Wisconsin.

"Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

"Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock whether the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact to the localities given the lower basis." The evidence does not justify this.

483 28. The Finding or Statement of Opinion, on pages 50 and 51 of the Report, in No. 20, that "Establishing the rates prescribed by Chapter 232, Gen. Laws 1907, and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis prescribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment." This is not justified by the evidence.

29. The Finding or Statement of Opinion, on pages 51 and 52 of the Report, in No. 21, that "If the rates on coal prescribed by Chap-

ter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232,
484 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts." This is not justified by the evidence.

30. The Finding on page 53 of the Report, in No. 24, that "Prior to the taking effect of Chapter 97, Gen. Laws 1907, the general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents for passengers of twelve years of age and over and one and a half cents per mile for passengers under twelve years of age." The evidence does not justify this Finding.

Three cents per passenger mile for passengers of twelve years of age and over and one and a half cents per passenger mile for passengers under twelve years of age had been the maximum charge in Minnesota, but there were many passengers carried at lower rates and the average rate per passenger mile was much less.

31. The Finding or Statement of Opinion, on page 54 of the Report, in No. 24, that "These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead."

32. The Finding or Statement of Opinion, on page 54 of the Report, in No. 25, that "Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the
485 interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless on a through ticket, against a passenger who was compelled to use a sleeping car." This Finding is not justified by the evidence.

33. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile of the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for pas-

senger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota." This is not justified by the evidence.

34. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "These reductions in rates were compelled by the necessary, immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume."

35. The Finding or Statement of Opinion, on pages 55, 56 of the Report, in No. 26.

36. The Finding or Statement of Opinion, on pages 56 and 57 of the Report, in No. 27.

486 37. The Finding or Statement of Opinion, on page 57 of the Report, in No. 28.

38. The Finding or Statement of Opinion, on pages 57, 58 and 59 of the Report, in No. 29, down to and including the second paragraph.

39. The Finding or Statement of Opinion, on pages 60 and 61 of the Report, in No. 29, that "The facts as found establish conclusively that the State in the rates prescribed by it is not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities."

In Subdivision VI, Relating to Valuation.

40. The Conclusion or Opinion, stated on page 62 of the Report, that "It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates."

41. On page 64 of the Report, after having stated that what may have gone into the construction and completion of the Roads would not take into consideration the changed condition of the country since the original construction, its growth and prosperity, then the Conclusion, ruling "*in which the companies are entitled to share * * * and by reason of changed conditions and lapse of time it has little weight in arriving at the present values."

42. On page 65 of the Report, the Conclusion or Ruling with reference to the case of Missouri, Kansas & Texas Railway Company vs. Love, et al., that "Wherever applicable, it must control the Master in determining the questions here raised."

43. The Conclusion or Ruling of the Master that the revenue of the railroads other than that derived from the properties used

487 for the benefit of the public are not to be considered, which is expressed on pages 65 and 66 of the Report as follows: "In the light of this decision and others therein referred to and approved,

our first duty is to ascertain the fair value of the property devoted to the public service.

"To this end a large volume of testimony was produced before the Master on behalf of Complainants and the State, respectively, as to the reproduction cost of such property, and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have, but as to them the public has no concern."

In Subdivision VII, Relating to Real Estate Values.

44. To the Finding upon pages 67 and 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Northern Pacific is $21,024,562.90. The value should have been found at not exceeding $9,498,099.27 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said exhibit, and the cross examination of the witnesses referred to in the said Report as having made appraisals on behalf of Complainants). If the cost of reproduction is to be the basis for valuation, not only should the values of the property as given by Mr. Morgan be the extreme limit of the values to be taken, but the addition of 5 per cent to the appraisal of the St. Paul and the Minneapolis properties for cost of acquisition and consequential damages and of 25 per cent to the appraisement of Duluth property for railway value, cost of acquisition and consequential damages is arbitrary and improper, and not warranted either in law or in fact. The valuation found by the Master also includes the value of lands not in use for railroad purposes at the present time.

488 45. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Great Northern is $25,172,630.80. The value should have been found at not exceeding $7,493,250.41 (see Defendants' Exhibit C—Morgan, State's Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point as having made appraisements on behalf of Complainants). The same reasons given in support of the objection No. 44 apply equally to this.

46. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Minneapolis & St. Louis Road is $5,999,397.90. The value should have been found at not exceeding $1,872,522.04 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point, as having made appraisements on behalf of Complainants). The reasons given in support of objection 44 apply here.

47. The Master made no deductions from valuations for street crossings or parts of streets used for right of way held under rights

acquired from the city authorities without acquisition of the fee as is made clear in the Report, on page 74, at which point he states he has made no deduction therefor, and says: "For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property."

48. The Master found the values of right of way, etc., outside of the terminals, by taking 75 per cent of the valuations as fixed by complainants' witnesses as the fair reproduction value of such property of the Northern Pacific and Great Northern railways as
489 appears from the statement on page 75 of the Report—"Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, 75 per cent of the valuations as fixed by complainants' witnesses has been determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases."

This method is arbitrary, is not based upon any evidence and includes much which is not proper to be included in the valuation.

49. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Northern Pacific case is $12,331,541.52. It should have been found as not exceeding $7,695,858.70 (see Defendants' Exhibit OO—Morgan, Estimate B, his testimony explaining the valuation there given, and the cross examination of the Complainants' witness Darling with reference to grading, clearing and grubbing).

50. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Great Northern case is $21,685,802. It should have been found at not more than $16,531,191.24 (see Defendants' Exhibit C—Morgan, Estimate B, also testimony of the witness Morgan, with reference to said valuation and the cross examination of the Complainants' witness Hogeland in relation thereto.)

51. The Finding on page 76 of the Report, that the value of the grading, clearing and grubbing in the Minneapolis & St. Louis Road is $2,551,690. It should have been found as not more than $1,867,784.66 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witnesses relative thereto).

52. The Finding on page 76 of the Report, that the value of the protection work, rip rap and retaining walls in the Great Northern Company is $850,069. It should have been found at not
490 more than $522,498.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witness Hogeland relative thereto).

53. The Finding on page 77 of the Report, that the value of the protection work, rip rap and retaining walls of the Minneapolis & St. Louis is $52,240. It should have been found as not exceeding $40,370 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the cross examination of Complainants' witness Cutler relative thereto).

54. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Northern Pacific case is $3,657,576.70. It should have been found as not exceeding $1,424,725.95 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Darling and Complainants' other witnesses relative to the values of cross ties and switch ties).

55. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Great Northern is $5,460,809. It should have been found as not exceeding $2,443,636.30 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Hogeland, and Complainants' other witnesses relative to the value of cross ties and switch ties).

56. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Minneapolis & St. Louis case is $1,149,829. It should have been found as not exceeding $530,726.56 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation, and the cross examination of Complainants' witness Cutler and Complainants' other witnesses as to the value of cross ties and switch ties).

491 57. The Finding on page 78 of the Report, that the cost of ballast in the Northern Pacific case is $1,960,969. It should have been found as not exceeding $1,266,932.79 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Darling, and other witnesses who testified as to cost of ballast and amount thereof).

58. The Finding on page 79 of the Report, that the value of the ballast in the Great Northern case is $3,861,360. It should have been found as not exceeding $2,870,472.43 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Hogeland, and other witnesses who testified as to value of ballast and amount thereof).

59. The Finding on page 79 of the Report, that the value of the rails in the Northern Pacific case is $5,645,307.73. It should have been found as not exceeding $3,552,777.93 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony of Complainants' witness Darling as to the valuation and amount of rails in Northern Pacific Road given in his direct and cross examination).

60. The Finding on page 79 of the Report, that the value of the rails of the Great Northern Railway is $9,053,977. It should have been found as not exceeding $6,693,565.02 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation and the testimony of the witness Hogeland on direct and cross examination in the Northern Pacific case as to value of rails, and testimony of the Complainants' witness Hogeland on cross examination as to cost and amount of rails).

61. The Finding on page 80 of the Report, that the value of the rails in the Minneapolis & St. Louis case is $1,540,392. It
492 should have been found as not exceeding $1,226,638.94 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation and the cross examination of Complainants' witness Cutler, as to rails and the testimony, direct and on cross examination, in the Northern Pacific case, of witness Darling).

62. The Finding on page 80 of the Report, that the track fastenings in the Northern Pacific Case were of the value of $727,228.37. It should have been found as not exceeding $473,183.14 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Darling as to track fastenings).

63. The Finding on page 80 of the Report, that the value of the track fastenings in the Great Northern Case were of the value of $2,087,615. It should have been found as not exceeding $1,493,-344.07 (see Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Hogeland, as to track fastenings).

64. The Finding on page 80 of the Report that the value of track fastenings in the Minneapolis & St. Louis Road is $258,561. It should have been found as not exceeding $198,337.55 (see Defendants' Exhibit K—Morgan, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Cutler, as to track fastenings).

65. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Northern Pacific road is $303,717.80. The value should have been found as not exceeding $176,889.59 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Darling, relative thereto).

66. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Great Northern
493 case is $300,519. The amount should have been found as not exceeding $199,146.11 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Hogeland, and other witnesses).

67. The Finding on page 81 of the Report, that the value of the switches, frogs and railroad crossings in the Minneapolis & St. Louis case is $66,807. The amount should have been found as not exceeding $42,073.48 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Cutler).

68. The Finding on page 81 of the Report that the value of the track laying and surfacing in the Northern Pacific case is $1,600,-591.56. It should have been found as not exceeding $792,636 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation and cross examination of Complainants' witness Darling).

69. The Finding on page 81 of the Report, that the value of the track laying and surfacing in the Great Northern case is of the

value of $2,207,753. It should have been found as not exceeding $1,366,615.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining said valuation, and testimony on direct and cross of the witness Darling in the Northern Pacific case, and cross examination of Complainants' witness Hogeland).

70. The Finding on page 83 of the Report, that the value of track laying and surfacing in the Minneapolis & St. Louis case is $384,751. It should have been—as not exceeding $251,917.80 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the testimony of the witness Darling, in Northern Pacific case, as to track laying and surfacing, and of other witnesses who testified upon the question).

494 71. The Finding on page 83 of the Report, that the value of the bridges, trestles and culverts in the Northern Pacific case is $3,586,053. The value as found should have been found as not exceeding $1,811,169.31 (see Defendants' Exhibit OO—Morgan, Estimate B, testimony of the witness Morgan explaining his said valuation, and cross examination of the Complainants' witness Darling relative thereto. The value as found by the Master was arbitrarily arrived at and is not justified by the evidence in the case).

72. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts of the Great Northern case is $6,664,729. The value should have been found as not exceeding $2,950,000 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony as to the value of omitted bridges. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence in the case).

73. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts in the Minneapolis & St. Louis case is $1,025,827. It should have been found as not exceeding $640,-465.26 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence).

74. The Finding on page 86 of the Report, that the engineering, superintendence and legal expense in the Northern Pacific Case was valued at $2,633,946. It should have been found at not to exceed $1,733,572.30 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony in explanation of the said valuation).

75. The Finding on page 86 of the Report, that the value of engineering, superintendence and legal expense in the Great Northern case was $3,867,040. It should have been found as not ex-

495 ceeding $2,470,383.13 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his valuation).

76. The Finding on page 86 of the Report, that the value of engineering, superintendence and legal expense in the Minneapolis & St. Louis case, is $690,364. It should have been found at not more than $412,034.21 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation).

77. The Finding on page 86 of the Report, that the value of the freight in construction of the Great Northern is $1,700,043. It

should have been allowed at not more than $752,547.41 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony of the witness Morgan, in explanation thereof, and the testimony of the Complainants' witness Darling in the Northern Pacific case, and of other witnesses as to the cost and proper allowance for this item.)

78. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Northern Pacific Case $3,710,479. There should have been allowed not to exceed $2,668,851.89 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining this valuation).

79. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Great Northern case $4,367,826. There should have been allowed not to exceed $3,868,335.38 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining this valuation).

80. The Finding on page 88 of the Report, that there should be allowed in the Northern Pacific case, for interest during construction, $7,386,215. No amount whatever should be allowed, and if any amount is to be allowed it should be upon a lower value than found by the Master.

81. The Finding on page 88 of the Report, that there should be allowed in the Great Northern case for interest during con-
496 struction, $17,880,150. No amount whatever should be allowed, and if any amount is to be allowed, it should be upon a lower value than found by the Master.

82. The Finding on page 88 of the Report, that there should be allowed for the Minneapolis & St. Louis case $1,834,880 for freight on construction material, contingencies and interest during construction. The amount should have been allowed at not exceeding $767,446,41 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining said allowance in his said Exhibit). Interest during construction is not a proper item to be allowed under any circumstances.

83. The Finding on page 88 of the Report, allowing in the Northern Pacific case $2,204,342 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

84. The Finding on page 89 of the Report, allowing in the Great Northern case $1,186,191 for interest in terminal property. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

85. The Finding on page 90 of the Report, allowing in the Minneapolis & St. Louis case $1,186,191 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

86. The Finding on page 92 of the Report, that the value of the physical properties of the Northern Pacific Railroad in Minnesota is $90,204,545. It should have been found as not exceeding $48,141,074.01 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be

excluded; also adaptation and solidification, and value of subsidiary properties).

497 87. The Finding on page 94 of the Report, that the value of the physical properties of the Great Northern in Minnesota is $138,425,291. It should have been found as not exceeding $70,231,714.13 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony in support thereof, including the cross examination of Complainants' witnesses; and interest during construction should be excluded; also adaptation and solidification and value of subsidiary properties).

88. The Finding on page 96 of the Report, that the value of the physical properties of the Minneapolis & St. Louis is $21,608,464. It should have been found at a value not to exceed $11,083,744 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be deducted; value of subsidiary properties and adaptation and solidification should be excluded).

In Subdivision VIII, Relating to Depreciation.

89. The Conclusion or Statement of Opinion, on page 98 of the Report, that "In view of all the foregoing considerations it follows without question there should be no deductions on account of depreciation." These defendants assert not only that it does not follow "without question," but also that it does not follow at all, that deductions should not be made on account of depreciation. Deductions should be made on account of depreciation.

In Subdivision IX, Relating to Stocks and Bonds as Affecting Value.

90. The Finding or Ruling on page 99 of the Report—"That value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property, or as a basis for rate making."

498 91. The Finding or Conclusion on page 99 of the Report, that the market value of stocks and bonds of the Minneapolis & St. Louis Road in 1908, $22,600,197, apportioned to Minnesota on the basis of the proportion of the mileage owned by the Company in Minnesota to its total mileage owned gives a valuation one-fifth less than the value of the property as conceded by the State, i. e., these defendants. The value conceded by the State in round numbers is $11,000,000 only.

In Subdivision X. Relating to Original Cost of Construction.

92. The Finding on page 102 of the Report, that the cost of construction of the Northern Pacific Road is $312,243,555. The amount should be found as not exceeding $251,853,509.50 (see Defendants' Exhibit V—Gray, deducting amounts paid for improvements and betterments out of earnings. Mr. Gray's testimony, Volume 2, pages 648, 649).

93. The Finding on page 104 of the Report of the amount of money put into the construction of the Great Northern Road as $295,401,213. The amount should have been found at not exceeding $246,652,801.13 (Complainants' Exhibits K, K-1, K-7, K-8, K-9).

94. To the Conclusion or Ruling on page 104 of the Report, that "Rates are not to be predicated on original investment."

95. The adoption by the Master as stated by him on page 106 of the Report, of the cost of reproduction new as the basis upon which to predicate rates.

In Subdivision XI, Relating to Public Demand for These Roads.

96. To the Conclusion or Ruling of the Master as to the Minneapolis & St. Louis Railroad, on page 108 of the Report, that "Necessarily to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does
499 not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business."

In Subdivision XII, Economy of Management.

97. The Conclusion or Finding on Page 109 of the Report, that "If the convenience and demands of the public were disregarded greater economy could doubtless be exercised. Full cars and long trains at fewer intervals, would be a great saving of cost and to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say, that this would result in great public inconvenience and dissatisfaction and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business."

98. The Finding on pages 109 and 110 of the Report, that "It is proper for the carrier not only to provide itself with ample facilities for the sufficient conduct of its present business, but also to anticipate demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

"Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and prospective needs are unreasonable or excessive, or that any property has been improperly included as a basis of cost of reproduction for rate making purposes."

In Subdivision XIII, Valuations of Entire System.

99. The Finding on page 111 of the Report, that the value of the reproduction of the entire system of the Northern Pacific Railway Company, *as* $452,666,489. It should have been found not to exceed $300,000,000.

500 100. The Finding on page 111 of the Report, that the value of the cost of reproduction of the Great Northern System *as* $457,121,469. It should be found at a sum not exceeding $350,000,000.

In Subdivision XIV, Division of Property Values Between Freight and Passenger Business, Inter and Intra.

101. To the Conclusion or Ruling on page 112 of the Report, in effect, that the passenger rates and the freight rates must each stand or fall by themselves and the value of the property for the purpose of determining the validity of the rates be divided between freight and passenger business, but expressed in the Report as follows:

"It is inequitable that the traveling public largely on pleasure bent should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

"On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equable basis as near as may be."

102. The Finding or Conclusion or Ruling, on page 113 of the Report, that "Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest all things considered in all rate cases heretofore judicially determined. * * * The revenue basis is not ideal, but it has an element of certainty possessed by no other and is no more objectionable in other respects." The true basis for a division between freight and passenger would be upon the basis of the use made of the property by each class of business. The railroads could have produced evi-
501 dence showing the use made by each class of business and thus have afforded the best, if not the only, proper basis for a division of value. They did not do so.

103. The division of the values of the property of the Northern Pacific Railway upon the basis of the gross earnings from freight business in the State and passenger business in the State, as set forth in the Report at page 114. The true division should be made upon the basis of the use for freight business and passenger business. But if we concede that the division must be made upon the basis of gross earnings because the evidence affords no basis upon which to divide upon the basis of use, yet the value so divided is far in excess of what it should be, as appears from objections hereinbefore set out.

104. The apportionment of the value of the Northern Pacific property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on pages 114 and 115 of the Report. The division should be made upon the basis of use.

Exhibit 80—Elliott shows the intrastate ton miles and the interstate ton miles for the year, from which it can be computed that the intrastate ton miles did not exceed 12 per cent of the total ton miles for the State. 12 per cent of the value of the property used for intrastate freight business upon the basis of the Master's Finding of total value, would be $7,973,468.40 instead of $10,867,837 as found by the Master. It also shows that it was used to produce 52,317,320 intrastate passenger miles, 100,930,180 interstate passenger miles or 34.2 per cent for intrastate.

105. The summary of apportionment of values to different classes of business in Minnesota in the Northern Pacific case, as set forth on page 116 of the Report for reasons which are fully apparent from objections hereinbefore set out.

502 106. The division of the total value of the Great Northern properties in Minnesota between freight business and passenger business on gross earnings basis as set forth on pages 116 and 117 of the Report, for the reason that the best, if not the only, true basis for making such division is that of the use made of the property in each class of business, and the Railroad Company could have furnished evidence as to that use in such way as to enable a proper division to be made upon that basis. But, inasmuch as it did not do so, if the division is to be made upon the basis of gross earnings, the value of the whole property, as found by the Master, is excessive, as appears from objections heretofore set out.

107. The apportionment of the value of the Great Northern property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on page 117 of the Report. The division should be made upon the basis of use.

Complainants' Exhibit 53—Ward shows the ton miles intrastate and the ton miles interstate from which it appears that in the intrastate freight business, the use of the property was 8 per cent of the use for the entire freight business of the State, i. e., 8 per cent of the total ton miles were intrastate. The value assigned to the total freight business of the State by the Master is excessive, as appears from objections heretofore set out, but upon that valuation the amount to be charged to the intrastate freight business would be $8,704,182.32 instead of $16,442,200, as found by the Master. Complainants' Exhibit 53—Ward also gives the intrastate passenger miles and interstate passenger miles, from which it may be computed that substantially 50 per cent thereof is used for intrastate passengers. Upon the basis of the valuation found by the Master for Minnesota passenger business this would increase the value

503 assigned by him in his Findings to intrastate passenger business, but upon a proper valuation the value would be much less than that assigned by the Master.

108. The Summary of apportionment of total value to different classes of business for the Great Northern Road, as shown on page 118 of the Report. The particular reasons of the objection to this summary are specified in particular objections heretofore set out.

In Subdivision XV, Reasonable Return.

109. The Finding, Conclusion or Ruling on pages 119 and 120 of the Report, that "It follows therefore that such valuation is as much an element of rate making and is entitled to the same consideration as the operating expenses of the Company. The theory that it is entitled to some return, the amount thereof to be adjusted by the Legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and

fair return is unreasonable and is confiscatory to the extent that it comes short of producing such return and is a taking of property from the carrier class and giving it to the persons served without compensation."

110. The Finding, Conclusion or Ruling on page 122 of the Report, that "Under the conditions disclosed in this case the companies are entitled to a net return of 7 per cent upon the value of their property as herein found."

In Subdivision XVI, as to Net Revenue.

111. The Finding or Determination on page 126 of the Report, that "The method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to traffic on their respective roads most nearly approximates an accurate result,"
504 and the adoption thereof by the Master for the purpose of division in the Northern Pacific and Great Northern cases.

In Subdivision XVII, as to Net Return of Property Valuations Assigned to Intrastate Business.

112. The Finding on page 133 of the Report, that "The weight of testimony that the cost per ton mile of doing state freight business is at least two and a half times as much as is such cost in doing interstate freight business in Minnesota, and the testimony would sustain, if it does not compel, a finding that such relative cost is as three to one. He also finds from the evidence that the cost per passenger-mile in the state passenger business is at least 15 per cent greater than such cost in the interstate passenger business in Minnesota." The Master should have found that the cost of doing intrastate freight business per ton mile, in the Northern Pacific case, does not exceed 1.5 times the cost per ton mile for intrastate freight, (testimony of the witness Johnson Volume 7, pages 4111 to 4121; testimony of witness Hillman, Volume 6, pages 3301 to 3313, 3317 to 3322, 3401 to 3405; also 4154, and Exhibits 3-M—Hillman, Tables 6, 7 and 9 when re-stated, as required by the testimony of Mr. Hillman at Volume 7, page 4154); and in the Great Northern case does not exceed 1.7 times per ton mile cost of inter for intrastate freight (Defendants' Exhibit G-7—Hillman, Complainants' Exhibit 53—Ward); and for the Minneapolis & St. Louis that it costs more per ton mile for interstate freight than it does for intrastate freight (Defendants' Exhibit L—Hillman, Defendants' Exhibit M—Hillman, Defendants' Exhibit L—Hillman, Table 5); and the relation of cost of passenger business is for Northern Pacific intra 1.1119 times inter passenger mile (Defendants' Exhibit 3-M—Hillman, Table 13); for Great Northern for intra 1.0513 times the cost inter passenger
505 mile (Defendant' Exhibit G—Hillman, Table 4, Complainants' Exhibit 53—Ward).

113. The division, in the Northern Pacific case, of the miscellaneous freight and passenger earnings between inter and intrastate

business made by the Master on pages 134 and 135 of the Report, the same being made upon the basis of transportation revenue. The evidence does not disclose any basis for a division thereof, except as it may have been assigned by the defendant railroad company. The defendant railroad company in its report to the State has assigned these miscellaneous earnings as between inter and intra, giving a much larger portion thereof to the intrastate business than the Master gives in his Report. The defendants are entitled to have the intrastate business credited with the amounts of miscellaneous earnings so reported to the State by the railroad companies, and also its share of income not from operation. (Defendants' Exhibit 3-V—Hillman.)

114. To the division made by the Master, of operating expenses between freight and passenger business, on page 136 of the Report, assigning $5,343,718.25 to freight and $2,311,631.95 to passenger. The division should be made upon the same basis or in the same proportion as Defendants' Exhibit 3-M—Hillman, Table 4, Column 5.

115. The division made by the Master, in the Northern Pacific case, of the total freight operating expense between intrastate and interstate freight on page 139 of the Report, wherein he shows $1,355,273.82 to intrastate and the remainder to interstate. The total amount so divided is less than it should be, because an excessive amount was assigned to passenger business, as appears from objections hereinbefore set out, and it is divided upon the basis of too great an excess of cost for intra over interstate freight.

116. The division made in the Northern Pacific case, of operating expense between intrastate passenger and interstate passenger, on page 140 of the Report. The amount of the total expense so
506 divided is in excess of what it should be, as appears from objections hereinbefore set forth, and too great an excess cost over interstate is assigned to intrastate business.

117. The Finding of the Master on pages 144 and 145 of the Report that the various statements introduced in evidence by the defendants to show that the net Minnesota interstate freight and the Minnesota interstate passenger incomes in the business of the fiscal year ending June 30, 1907, failed to show that the rates complained of were not confiscatory. The evidence does not justify this and it is for the Complainants to prove that the rates are confiscatory, and not for defendants to disprove it.

118. The division of the earnings and operating expenses in the Great Northern case as made on pages 145, 146, 147, 148, 149, of the Report in the following respects: It does not include or give the intrastate business its share of the general income of the road not from operation.

It divides the miscellaneous freight and passenger earnings between intrastate and interstate business upon the basis of transportation revenue; whereas, the evidence affords no basis for such division, and the railroad, in its report to the State, specifically assigned the greater part of these earnings as between intrastate and interstate business, and the defendants are entitled to the benefit of the division thereof so made by the railroads.

In the division of operating expenses between freight and passenger, an excessive portion thereof is assigned to passenger.

In dividing the freight operating expense between intrastate and interstate freight too great an excess cost of intrastate freight per ton mile over interstate freight per ton mile, and of cost intra passenger mile over interstate passenger mile is assigned to intrastate
507 business. The total amount of freight operating expense assigned between interstate and intrastate is excessive, as appears from objections above made.

119. The sum of $92,645.87 allowed by the Master, on page 151 of the Report for outside operations to be divided between intrastate passenger business and interstate passenger business on the passenger earnings basis, is insufficient. The amount should have been not less than $132,700 (Exhibit I—Hillman).

120. The net intrastate freight income found by the Master as stated on page 134 of the Report at $898,997.81 is too small. The net intrastate freight income should have been found to be not less than $1,150,916.99.

121. The Finding or Conclusion of the Master on page 157 thereof, "As hereinbefore stated, the results obtained by the employment of his (Mr. Hillman's) methods of division of operating expenses are found not to be correct, fair or just."

122. The Finding set forth on page 158 of the Report, that the total value of the property of the Minneapolis & St. Louis Company used for the year ending June 30, 1907, in the conduct of its business in Minnesota is $21,608,464. The amount should have been found as not in excess of $11,083,744.12.

123. The Finding, Conclusion or Ruling on page 158 of the Report, that "Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is assigned to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each." The division should be made
508 upon the basis of use. The railroad company had in its possession evidence of what that use was, though it did not see fit to give it to the Master.

124. The summary of the apportionment of total value to different classes of business in Minnesota for the Minneapolis & St. Louis Road given on page 159 of the Report. The total value of the property is excessive, as set out in objection No. 123. The apportionment of the value between freight and passenger business upon a gross earnings basis is not made upon the right principle, and therefore incorrect. The assignment of 22.61 per cent of the total value apportioned to the freight business is excessive. The assignment should be made upon the basis of the ton miles intra as compared with the total ton miles. This would assign to intrastate freight business 13.727 per cent of the total value of the property apportioned to the freight business (see Defendants' Exhibit L—Hillman, Table No. 5). The apportionment of 14.80 per cent of value

found for the entire passenger business to intrastate passenger business is made upon the wrong basis. It should be made upon the basis of passenger miles.

125. The Finding, or Statement of Opinion, on page 160 of the Report, that the amounts there stated as claimed by the defendants for the net income of freight and passenger business intrastate on the Minneapolis & St. Louis are in excess of the net income from all sources derived from the businesses over and above operating expenses and taxes; and that the method employed by the defendants for ascertaining the amount of operating expenses was not correct, fair or just and resulted in assigning to each of such class- of business an amount less than was in fact expended by the company in the conduct thereof.

126. The Finding on page 160 of the Report, that the total net earnings of the Minneapolis & St. Louis Company in Minne-
509 sota for the year 1907 from all sources which involved the use of property included in the valuation, was $895,977.66. The amount was much larger.

127. The Finding set forth on pages 159 and 161 of the Report as to the Minneapolis & St. Louis Road, that "The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said company in said year in said State and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14 per cent upon the proportion of the value of the whole property which was used in the conduct of each such class of business and which is properly chargeable thereto."

128. The Finding of the net earnings of the Minneapolis & St. Louis Road for the years 1903 to 1900, inclusive, for the system and for the State of Minnesota, as set forth in the Report on page 161 thereof. They are too little.

129. The Finding or Statement of Opinion on page 162 of the Report that "If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate revenue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½ per cent of the revenue derived from such business."

130. The Finding or Statement of Opinion on pages 162 and 163 of the Report, that "on the volume of the business of the passenger service rendered by the Minneapolis & St. Louis Company within the State of Minnesota for the year ending June 30, 1906, the losses in revenue which would have resulted had the two cent pas-
510 senger law complained of been in effect, are intrastate passenger business in Minnesota $72,453., interstate passenger business in Minnesota $74,371."

131. The Finding or Statement of Opinion on pages 163 and 164 of the Report, in which the Master states the amount of loss in revenue which would have been suffered by the Minneapolis & St. Louis Road in the year 1906 if the Commodity Rates Act had been in effect. The amount stated is excessive.

132. The statements of the revenue of Minneapolis & St. Louis Company for June 30, 1907, and the division and apportionment of the miscellaneous revenue and to the division of the operating expenses between freight and passenger and between inter and intrastate freight business, and the statement of the net intrastate income freight and passenger, and the assignment or division of the value of the property between inter and intra (see pages 165 to 168 of the Report). The same reasons for objection exist as hereinbefore stated in objections to the like divisions and apportionments in cases of the Northern Pacific and Great Northern Railways.

133. The Finding or Statement of Opinion on page 168 of the Report, that "Dividing the freight operating expense and the passenger operating expense in Minnesota between intrastate business and the interstate business, respectively, on the straight revenue basis, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof, and that consequently the rates of return on value * * * are in excess of the actual returns, respectively, which would have been earned if the rates complained of had been in effect during the whole of such fiscal year."

134. The Finding or Conclusion on pages 168 and 169 of the Report, that "It appears from the foregoing facts, and the Master finds that for the two years next prior to July 1, 1908, in
511 these three cases the revenue derived by the said defendant railway companies and each of them from the property thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad and Warehouse Commission and the Acts of the Legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined."

In Subdivision XVIII, Express Company Revenue.

135. The Finding or Conclusion on pages 169 to 171 to the effect that dividends received by the Northern Pacific Company and the Great Northern Company from their express business done through express companies owned and controlled by them is not to be included in their operating revenue, nor taken into account in determining the validity of the rates complained of.

512 *Decree.*

136. To each of the proposed decrees in that the decrees recommended to be entered should be decrees dismissing the Bills of Complaint.

GEORGE T. SIMPSON,
Attorney General.
EDWARD T. YOUNG,
EDMUND S. DURMENT,
Solicitors for Defendants.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled. Certain of the requests for further findings have been complied with, as will appear by the Master's Report to be filed in Court with the Clerk thereof in said several actions. The requests not complied with are found to be not material or relevant.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

NOTE.—Original Exceptions and Master's Rulings are filed in the Northern Pacific Case, only one copy having been served on the Master.

513 Circuit Court of the United States, District of Minnesota (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

Now come the defendants Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson, and respectfully ask that the findings of the Master, as contained in his report, be amended in the following particulars:

514 I.

Amend first paragraph of tenth subdivision, at page 98, by showing face value of the stocks and bonds of the company, as well as their alleged average market value for a period of five years.

Complied with. C. E. Otis, Special Master.

II.

Amend paragraph on page 99 relating to the capitalization of the Great Northern Railway so as to show that at the time of the commencement of the action (Complt. par. VIII) the total outstanding capitalization of the Great Northern was

Stock	$140,577,500.00
Bonds	83,119,939.00
Total capitalization	$232,697,439.00

Complied with. C. E. Otis, Special Master.

That on June 30th, 1908, the date of the appraisement by the company, the outstanding capitalization (page 45 Annual Report 1959) was:

Stock	$209,962,750.00
Bonds	97,955,939.39
Total capitalization	$307,918,689.39

It does not appear that any of the additional capitalization issued since suit was commenced was used in the acquisition of additional properties in Minnesota.

Amend also the reference on page 102 to the Great Northern so as to read as follows:

"In the Great Northern case the balance sheet of the company of date June 30th, 1908, shows the book value of the railroad and its equipment for the entire system, devoted to the public service to amount to the sum of $291,414,415.34 (road $240,349,771.44; equipment, $51,064,648.90)."

Refused. C. E. Otis, Special Master.

515 An examination of the company's books and vouchers by the State's accountant (Exhibit "K"—Hillman, 1 to 7), shows the book cost of the road to June 30th, 1908, the same as above, $291,414,415.34, but also shows various items in the account which the State claims are fictitious or excess items, which should be deducted from the gross book cost in order to show the actual cost of the road. The principal item claimed to be fictitious is an arbitrary increase in the valuation of the property, and the capitalization in 1879, when the company's immediate predecessor, the Saint Paul, Minneapolis & Manitoba Company took over the properties from its predecessor the Saint Paul and Pacific Co. Mr. Hillman was unable to determine from the books whether the excess valuation of the property at that time was $12,126,342.19—which he claims is the minimum, or $21,347,040.70, which he claims is the maximum. No explanation of this transaction was offered by the company.

All subsequent items of alleged excess cost shown by the books are grouped by Hillman on Exhibit "K"—7 under two heads marked "A" and "B"; the only difference being that in the "A" group, the first item above is used as the claimed excess, and added to all subsequent items, while in the "B" group the second above item is used as the claimed excess.

Subtracting $48,243,614.21, the sum of the items constituting Hillman's estimate "A"—being the lesser of the two—it leaves the total book cost of the road and equipment as claimed by the State, $243,170,801.00. (Vol. 3, part 2, page 1855).

The reasons for the claim of the State appear on the Exhibits (Hillman "K" 1 to 7), and in Mr. Hillman's testimony, (Vol. 3, part 2, pages 1764 to 1910, Record).

The total track mileage of the road's entire system is 8,528.98, and of the part in Minnesota, 2,779.30, so that practically 32.6 per cent is in Minnesota. Taking this per cent of the above cost, gives $79,273,681 as the amount which the State claims was actu-
516 ally expended in construction and equipment of the road in Minnesota.

Mr. Drew, the Comptroller of the Great Northern offered explanations of some of the items claimed to be excess by Mr. Hillman. His testimony commences at page 1910, Vol. 3, part 2, of the Record. Some of the alleged excess items were not explained by the company.

Amend the findings in reference to the division of the value of the property between intra and interstate freight and intra and interstate passengers so as to show the relation, in the case of the freight, of the intra and inter ton miles in the State, and as to the passenger, the relation of the intra and inter passenger miles.

Respectfully submitted, GEORGE T. SIMPSON,
Attorney General.

EDWARD T. YOUNG,
EDMUND S. DURMENT,
Of Counsel.

Refused. C. E. Otis, Special Master.

517 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE Forest, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Supplementary Report to the Court.

518 To the Honorable the Judges of the Circuit Court:

Now comes Charles E. Otis, Special Master in each of the above entitled suits, and makes this his Supplemental Report and files the same with his original Master's Report to the Court with the Clerk thereof in said several suits.

Said Original Report herewith filed (save as modified and corrected as hereinafter stated) was completed and personally served

by copy on counsel of the respective parties at St. Paul, Minnesota, on the 21st day of September, 1910, and within 30 days after such service the counsel for the Complainants and the counsel for the answering Defendants severally served on the Master their respective exceptions to the said Report, all as provided in the order appointing the undersigned Special Master in said causes.

Counsel expressly waived argument of such exceptions before the Master. Thereupon the Master forthwith gave such exceptions and the subject-matter thereof careful consideration, and becoming satisfied that all of the matters covered by them had been fully considered by him in making up his Report so served, the Master overruled the said exceptions and each and every of them. Said exceptions and the Master's rulings thereon appended thereto are herewith filed.

At the request of counsel for the answering Defendants the Master has made some further findings. He has also made correction of some clerical errors found to exist in said Report so served on counsel. Said further findings and corrections do not substantially modify, change or affect any of the conclusions of the Master as set out in his Report so served. Such corrections and further findings, and where and how made, fully appear in the original manuscript of such Report, which will be filed herewith in the Northern Pacific case. The printed reports so to be filed in said several suits
519 are intended and are supposed to be exact reprints of the said amended Master's Report so in manuscript save that they have all been signed by the Master in his own hand.

All of which is respectfully submitted.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

520 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 21ST, 1910.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Hon. Charles A. Willard, U. S. District Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Before Judge Sanborn.

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Mr. Hale Holden appearing on behalf of the complainants, Mr. C. W. Bunn appearing on behalf of the North Pacific Railway Company, Mr. E. Y. Young and Mr. Edward S. Durment appearing on behalf of the Attorney General and Railroad and Warehouse Commission, and the said causes having been heretofore set down for hearing at this time and place, upon the exceptions of the complainants and defendants to the Special Master in Chancery's Report herein, the same now coming on,

521 Mr. Jared How opens and argues said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. C. W. Bunn argues said exceptions on behalf of the Northern Pacific Railway Company.

Mr. Hale Holden argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

* * * * * * *

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

522 United States Circuit Court for the District of Minnesota,
Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 22ND, 1910.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of John S. Kennedy, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereis is resumed and proceeded with as follows—

Mr. Hale Holden resumes his argument upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues further upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of the complainants.

523 Mr. E. T. Young argues said exceptions on behalf of the defendant Attorney General.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

524 United States Circuit Court for the District of Minnesota,
Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 23RD, 1910.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereof is resumed and proceeded with as follows—

Mr. Edward T. Young argues said exceptions to the Court upon behalf of the Attorney General.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes his argument upon said exceptions on behalf of the Attorney General.

Mr. Edmund S. Durment argues said exceptions on behalf of the Railroad and Warehouse Commission.

And the hearing of said causes not being concluded at the
525 hour of said adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Friday morning next at ten o'clock.

Ordered: That this Court do now adjourn until Friday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

526 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term A. D. 1910.

NOVEMBER 25TH, 1910.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors, and the further trial thereof is resumed and proceeded with as follows, viz:

Mr. Edward S. Durment argues upon said exceptions on behalf of the Railroad and Warehouse Commission.

Mr. Pierce Butler argues upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of complainants.

527 Mr. Hale Holder argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court Ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

Ordered: That this court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

528 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 26TH, 1910.

Saturday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors of the Will of John S. Kennedy, Deceased, and Henry F. Dimock
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further argument thereof is resumed and proceeded with as follows:

Mr. Hale Holden argues in conclusion upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues in conclusion on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

529 Mr. Jared How argues in conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties, said causes are duly submitted to and by the Court taken under advisement.

Ordered: That this Court do now adjourn until Monday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

530 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named How, Butler and Mitchell, attorneys for the complainants therein named by handing to and leaving a true and correct copy thereof with Pierce Butler, a member of the above named firm of How, Butler & Mitchell personally at St. Paul, in said District on the 14th day of November A. D. 1910.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy*.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named E. T. Young and E. S. Durment attorneys for the defendants therein named by handing to and leaving a true and correct copy thereof with each of the above named E. T. Young and E. S. Durment personally at St. Paul in said District on the 14th day of November A. D. 1910.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy*.

531 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

Consolidated.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON and Others, Defendants.

Application for Allowance of Master's Compensation.

To the Honorable the Judges of said Court:

Now comes Chas. E. Otis, Special Master in Chancery in the above causes and respectfully represents.

By an order of this Court of date and entered May 4th, 1908 your petitioner was appointed Special Master in the above and six other like causes to take and report the testimony and recommend to the Court judgments to be entered therein. Of the nine cases so referred, by arrangement of Counsel the above three were taken
532 up and proceeded with, the remaining six to remain in abeyance until the first mentioned cases shall have been finally determined. In the three causes so selected for hearing the Master has made his final report to the Court and completed his labor therein, and now respectfully requests the Court to fix the compensation he shall receive for services so rendered by him and which in brief have been substantially as follows:

1. The Master prepared, took and filed his oath of office in each of said causes so referred to him, conferred with counsel of the respective parties as to course of procedure and order of testimony therein and prepared and served summons on all the counsel for the purpose of initiating the work, resulting in a hearing and order that the taking of testimony should be first begun in the Northern Pacific Case and the time and place therefor was definitely fixed. A week's time of the Master was taken up with this preliminary work.

2. Pursuant to arrangements so made the taking of testimony in the Northern Pacific Case was commenced on the 4th day of June, 1908 and was diligently proceeded with from day to day and from time to time until all testimony special to that case had been taken, ending on the 25th day of January, 1910. The Master was actually engaged for ninety-nine days in the taking of testimony in this cause. The testimony so taken exclusive of exhibits comprises 4528 typewritten pages. There were 168 exhibits, exclusive of many sub-tables and Public Records.

3. Later and on August 4th, 1908, when there was a temporary suspension of proceedings in the Northern Pacific Case, and taking of testimony was commenced in the Minneapolis and St. Louis case and was in like manner proceeded with and finally closed on the 31st day of May, 1910. The Master was actually engaged for thirty-one days in the taking of testimony in this cause. The tes-
533 timony so taken comprises, exclusive of Exhibits 1350 typewritten pages. There were 49 Exhibits exclusive of many sub-tables and Public Records.

4. The taking of testimony in the Great Northern Case was commenced before the Master on the 15th day of March, 1909, and was in like manner proceeded with and concluded on the 27th day of January 1910. The Master was actually engaged for forty-two days in the taking of testimony in this cause. The testimony so taken, exclusive of Exhibits comprises 2148 typewritten pages. There were seventy-eoght Exhibits exclusive of many sub-tables and Public Records.

5. It was stipulated by counsel that the evidence submitted in any one of the cases so far as relevant and material to the issue in any of the other cases, should be received and considered as evidence in each case.

6. When the taking of testimony was finally concluded, by request of counsel the causes weree set down for oral argument before the Master and seventeen days was spent by him in listening to the arguments orally presented. Such oral arguments were taken down by the of-icial stenographer, at counsel's requesr and were by them revised and submitted to the Master and consisted of nearly 1500 typewritten pages. Arguments before the Master were concluded on the 29th day of July, 1910.

In addition to such oral arguments the respective counsel prepared and submitted to the Master four several printed briefs, amounting in the aggregate to 1163 pages, all of which, as well as the oral arguments and the transcription thereof, received the careful consideration of the Master.

7. From the time the Master was advised that his appointment was under consideration, which was the latter part of April, 1908, until his report was finally completed and submitted to the Court on October 29th, 1910, the Master devoted substantially his whole time and attention to the cases so referred, and in the performance of the duties so by the Court imposed upon him in connection there-
534 with. He at all times presided and supervised and directed the taking of testimony. At intervals when for convenience

of counsel, and to enable them to prepare for further examination and cross-examination, the taking of testimony was suspended, the Master himself was engaged in carefully reviewing the testimony as transcribed by the stenographer and the Exhibits submitted in connection therewith, causing corrections therein to be made as was from time to time required so that they should conform to the proceedings taken before the Master. He was further engaged in familiarizing himself with the testimony and with decisions and precedents bearing upon the many and difficult questions which the causes presented to the end that he might be prepared to return a full and just report as speedily as practicable after final submission. He at all times held himself ready to proceed at the request and convenience of counsel with the work before the Master, and as far — was practicable and consistent with its importance, strove to speed the trial and ultimate decision of the causes so submitted, and there has never been at any time any delay on his account, nor was any engagement or other matter personal to himself ever permitted to interfere with his duties and labors as Master. In this matter substantially his whole time for a period of two and one-half years has been by him devoted to his work.

In view of the foregoing matters and the great national and commercial importance of the questions submitted and the burden of responsibility so imposed upon the Master, he is of the opinion that his services in the three cases have been and are reasonably worth the sum of Twenty-five thousand dollars of which he has heretofore been paid and received the sum of seven thousand five hundred dollars; and he suggests that the compensation as fixed be apportioned as an expense in the three cases as may be agreed upon by counsel or determined by the Court to be just and equitable.

Counsel of the several parties have all been advised of the
535 claim here made by the Master and the amount thereof, and as the Master is informed, desire that the matter be left to the judgment and discretion of the Court without a hearing thereon.

All of which is respectfully submitted.

Dated, St. Paul, Minn., Nov. 10th, 1910.

CHAS. E. OTIS,
Special Master.

On reading the foregoing application, and upon consideration it is ordered, that the parties to the suits specified in the caption to the foregoing application, show cause before the United States Circuit Court for the District of Minnesota, Third Division, at the Federal Building in St. Paul, Minnesota, on the 17th day of November, 1910, at 10 o'clock in the forenoon, why the foregoin- application should not be granted, and why the compensation fixed therein should not be apportioned equally between the cases against the Northern Pacific Railway Company, et al., The Great Northern Railway Company, et al., and the Minneapolis & St. Louis Railroad Company et al.

Let a copy of the application and of this order be served upon Messrs. How, Butler & Mitchell, attorneys for the complainants, and

Messrs. E. T. Young and E. S. Durment, attorneys for the defendants with all convenient speed.

WALTER H. SANBORN,
U. S. Circuit Judge.

Dated November 12, 1910.
St. Paul, Minnesota.

(Endorsed:) Application of Special Master for Compensation. Filed Nov. 28, 1910. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

536 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, and CHARLES E. ELMQUIST, and Companion Cases, Defendants.

Consolidated.

In the Matter of the Application of the Master in the Above-entitled Action to Have His Fees for Services Therein Fixed by the Court.

The Undersigned, representing the State of Minnesota, which is the actual defendant in the above entitled action, and representing also formally the state officers who are named as defendants therein, hereby protest against the allowance of the claim made by the Master for a fee of Twenty-five Thousand (25,000) Dollars for his services in said cases.

We respectfully represent on behalf of our said clients, and the State, that the Master's claim is excessive, and out of all fair proportion to the value of his services.

This litigation in reporter's fees, the fees of expert witnesses, and in the printing of the enormous record has already incurred an expense which almost makes this class of litigation prohibitory. Whatever becomes of the cases ultimately, the costs are going to be a very heavy burden, and, therefore, no allowance should be made
537 for merely constructive services. The length of time consumed in trying these cases makes the employment of the Master different from a mere temporary service. The hearing of the cases did not take all of his time since the trials began, and compensation for that period in excess of that allowed by law for the same period to a judge of the court, seems clearly excessive. The fixing of the Master's fees rests in the sound discretion of the court. The court is familiar with the character and extent of the work

performed, and we desire only to ask the court to allow no more than reasonable compensation for the services rendered.

Respectfully submitted,

GEORGE T. SIMPSON,
Attorney General of Minnesota.

EDWARD T. YOUNG,
Of Counsel.

(Endorsed:) Objections of Att'y Gen'l Simpson to Master's fees. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

538 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

The application of Honorable Charles E. Otis, Special Master in Chancery, in cases above entitled, for the determination and allowance of his compensation for his services therein, came on to be heard upon return of the order to show cause attached thereto. The attorneys for the complainants appeared but made no objection to the allowance of the fee. No one of the other parties, or of their attorneys, objected to its allowance, except that the written objection of Honorable George T. Simpson, and his counsel Edward T. Young, filed herewith, was submitted.

The Court is aware of the learning, ability and patience that were required to fitly consider and decide the questions of law and of fact which these cases present, and is familiar with the burden of
539 labor, care and responsibility the special master has borne, and after an examination of his report and of the printed volumes of the evidence, he personally heard, and upon reflection

It is ordered, that the compensation of the master for his services in these cases be, and the same is hereby fixed at the sum of Twenty-five thousand dollars ($25,000.00), and this amount is allowed therefor.

It is further ordered, that this amount be distributed so that ten thousand dollars ($10,000.00) thereof be allowed and paid in the cases against the Northern Pacific Railway Company, and others ten thousand dollars ($10,000.00) in the case against the Great Northern Railway Company, and others, and five thousand dollars ($5,000.00) in the case against the Minneapolis & St. Louis Railroad Company, and others.

It is further ordered, that the respective railway companies above mentioned forthwith pay their respective shares of the unpaid balance of the compensation hereby allowed, and that the amounts thus paid abide the result of the suits and be taxed as costs and recovered, as may be directed by the subsequent orders or decrees of this Court.

WALTER H. SANBORN,
U. D. Circuit Judge.

St. Paul, Minnesota, November 28, 1910.

(Endorsed:) Order allowing Special Master's fees at $25,000.00. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

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SHEPARD
v.
NORTHERN PAC. RY. CO. et al.

KENNEDY et al.
v.
GREAT NORTHERN RY. CO. et al.

JAMES
v.
SAME.

SHILLABER
v.
MINNEAPOLIS & ST. L. R. CO. et al.

(Circuit Court, D. Minnesota, Third Division, April 8, 1911.)

(*Syllabus by the Court.*)

1. Constitution—Commercial Clause—Carriers—State Rates Violative of Commercial Clause:

The acts of the Legislature of Minnesota of April 4, 1907 (Gen. Laws 1907, c. 97 [Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2]), reducing passenger fares within the state about 33⅓ per cent., and of April 18, 1907 (Gen. Laws 1907, c. 232 [Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17]), reducing commodity rates within the state about 7.37 per cent., and the orders of its Railroad and Warehouse Commission of September 6, 1906, reducing general merchandise rates within the state from 20 to 25 per cent., and of May 3, 1907, reduc-

ing in rates within the state to distributing points, by their natural and necessary effect substantially burden and directly regulate interstate commerce, create undue and unjust discriminations between localities in Minnesota and those in adjoining states, violate the commercial clause of the Constitution (article 1, § 8), and are void.

2. Same—Rates Confiscatory:

These acts and orders which prescribe maximum fares and rates, that bring from their respective Minnesota intrastate businesses to the Northern Pacific Company an annual net income of only 2.909 per cent., to the Great Northern Company an annual net income of only 3.359 per cent., and to the Minneapolis & St. Louis Company an annual net income of only 2.47 per cent., of the respective values of their Minnesota properties devoted to those businesses, prohibit a fair return upon these values, take the properties of the companies without just compensation, violate the fourteenth amendment to the Constitution, and are void.

3. Constitution — Commercial Clause — Carriers—Rates—National Power to Regulate Interstate Commerce Exclusive and Paramount:

The power to regulate commerce among the states was granted by the people to the nation in the Constitution, is exclusive, may be exercised to its utmost extent by the use of all means requisite to its complete exercise, and no state by virtue of its police power, or any other power it possesses, may restrict this grant or the plenary exercise of this power, for these inhere in the supreme law of the land and are paramount to the powers of the states.

4. Same—Rates in Interstate Commerce National and Free to the Extent Not Regulated by the Nation:

The fares and rates of transportation in interstate commerce are national in character, susceptible of uniform regulation, and so far as the nation has not regulated them are free from regulation by virtue of the commercial clause of the Constitution.

5. Constitution—Commercial Clause—Carriers—Rates—Limits of National and State Power of Regulation:

The nation may regulate interstate fares and rates and all interstate commerce.

To the extent necessary completely and effectually to protect the freedom of, and to regulate, interstate commerce, but no farther, it may by its Congress and its courts affect and regulate intrastate commerce.

To the extent that it does not substantially burden or regulate interstate commerce, a state may regulate intrastate commerce and the fares and rates therein within its borders, but no farther. It may enforce regulations of intrastate com-
541 merce and its fares and rates which only incidentally or remotely affect interstate commerce. But state laws, orders, and regulations concerning intrastate commerce, or the fares

or rates therein, which substantially burden or regulate interstate commerce, or the fares or rates therein, are beyond the powers of the state, unconstitutional, and void.

And where the attempted exercise of the power of a state to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinges upon or conflicts with the constitutional power of the nation to protect the freedom of, and to regulate, interstate commerce and the fares and rates therein, the latter must prevail, because "that which is not supreme must yield to that which is supreme."

6. Constitution—Commercial Clause—Carriers—Rates—Effect, Not Terms, of State Regulation, Test of Substantial Burden on Interstate Commerce:

The effect, and neither the terms nor the purpose, of state regulations, determines whether they substantially burden, or only incidentally or remotely affect, interstate commerce.

And this is a judicial question, which each court must decide on its own responsibility on the special facts of the case before it, and in the decision of which it "must obey the Constitution, rather than the lawmaking department of the government."

7. Carriers—Rates—Discriminating Differences Between State and Interstate Rates Forbidden by Interstate Commerce Act:

The nation has the power to forbid, and by the act to regulate commerce (Act Feb. 4, 1887, c. 104, 24 Stat. 379 [U. S. Comp. St. 1901, p. 3154]), it has prohibited, undue discriminations between localities in different states wrought by unreasonable differences between intrastate and legal interstate rates caused by the reduction of the former by the acts and orders of the officers of a state.

8. Constitution—Commercial Clause—Minnesota Intrastate Rates Impose Unconstitutional Burdens on Interstate Commerce:

The facts considered, and held:

The unavoidable effect of the general and sweeping reductions of intrastate fares and rates in Minnesota, made by the acts and orders considered, was and is substantially to burden, directly to regulate, and to discriminate against the interstate commerce of the defendant companies, and to create undue and unjust discriminations between localities in Minnesota and those in other states, in violation of the commercial clause of the Constitution.

9. Carriers—Confiscatory Rates—Just Compensation Entitles to a Fair Return upon value of Property Used:

The just compensation secured by the fourteenth amendment entitles the defendant railroad companies to a fair return upon the reasonable value of their property in Minnesota devoted to the public use of transportation. Such a return is just to the public as well as to the carriers.

10. Carriers—Confiscatory Rates—Value of Railroad Properties—Cost of Reproduction New:

Under the evidence in these cases the cost of reproduction

new of the Minnesota properties of the defendant companies devoted to the public use of transportation is more persuasive evidence of their values than the market value of their stocks and bonds, or the original cost of their acquisition and construction.

11. Carriers—Confiscatory Rates—Reasonableness—Presumption of Correctness of Master's Findings Superior to Presumption of Reasonableness:

Rate making looks to the future, and is a legislative function. Rate judging, determining whether or not rates made are confiscatory, is a judicial function.

There is a presumption in the first instance that Legislatures and commissions make reasonable and just rates, and clear proof is requisite to overcome it.

But when, after fares and rates have been tried by actual use for months, after plenary proof of their effect and other facts
542 determinative of the issue confiscation vel non, has been made before a master learned in the law, who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that the rates were just and reasonable.

12. Carriers—Confiscatory Rates—Valuation—Cost of Reproduction—Interest During Construction:

Interest on the cost of reproduction of railroad property at 4 per cent. per annum during one-half the time requisite to acquire and construct it is a necessary expense of reproduction and may be lawfully allowed as such.

13. Same—Apportionment of Value—Revenue Basis Most Equitable:

Apportionment on the basis of revenue is the most reasonable and equitable method of assigning the value of railroad property in a state used for transportation to the various classes of its business, in order to determine the reasonableness of fares and rates.

14. Carriers—Confiscatory Rates—Reasonableness—Fair Return in Minnesota 7 Per Cent. Per Annum on Value Used:

A net income of 7 per cent. per annum upon the value of railroad property in Minnesota devoted to the public use of transportation is not more than the fair return to which a railroad company is entitled under the fourteenth amendment to the Constitution.

In Equity.

Jared How, Charles W. Bunn, Hale Holden, and Pierce Butler (Robert Thorne and William D. Mitchell, on the briefs), for complainants.

Edward T. Young and Edmund S. Durment (George T. Simpson, on the briefs), for defendants.

SANBORN, *Circuit Judge:*

In the year 1906 the Northern Pacific Railway Company, the Great Northern Railway Company, and the Minneapolis & St. Louis Railroad Company were carrying passengers and freight within, through, and without the state of Minnesota for legal fares, rates, and charges which had been established, filed and published in accordance with the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887 (24 Stat. 381, c. 104 [U. S. Comp. St. 1901, p. 3157]), and its amendments (U. S. Comp. St. Supp. 1909, pp. 1135, 1138, 1139), and these fares, rates, and charges were equable, relatively fair, and not discriminatory between interstate transportation and transportation within the state of Minnesota.

On September 6, 1906, the Railway and Warehouse Commission of the state of Minnesota by order directed a reduction of the maximum rates for the transportation of general merchandise within that state 20 to 25 per cent. below the fares and rates which these companies were then using, and on May 3, 1907, by a supplemental order it so reduced their in-rates to distributing points in the state that the reductions amounted in the case of the Northern Pacific Company to 13.58 per cent. On April 4, 1907, the Legislature of the state passed an act whereby it reduced maximum passenger fares within that state 33⅓ per cent. below the fares the companies were then using, and on April 18, 1907, it passed an act which reduced maximum commodity rates within the state 7.377 per cent. below the rates thereon in use by the companies. The laws of Minnesota required the companies, their officers and agents, to put these reduc-
543 tions in effect under severe and unconstitutional penalties. Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932; Gen. Laws Minn. 1907, c. 97 (Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2); Gen. Laws 1907, c. 232 (Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17); Rev. Laws Minn. 1905, § 1987. The companies made and have since maintained the prescribed reductions in the merchandise rates and the passenger fares, but at the suit of their stockholders this court temporarily enjoined them from reducing their commodity rates.

The complainants, stockholders respectively of these railroad companies, brought these suits against them and against the Attorney General and the members of the Railroad and Warehouse Commission of the state to prevent them from maintaining these fares and rates, on the grounds (1) that the orders of the Commission and the acts of the Legislature described substantially burdened and regulated interstate commerce on the railroads of these companies, and (2) that their necessary effect was the confiscation of property of the companies. The cases were referred to Hon. Charles E. Otis as special master to hear and report the evidence, to find the facts, and to recommend forms of decrees. He has made a clear, concise, and exhaustive finding of the facts, has returned all the evidence to the court, and has recommended decrees for the complainants on both of the grounds they presented. Exceptions to his report have been

argued, and the cases are here for decree. In the discussion of the questions at issue the term "defendants" will be used to designate the Attorney General and the members of the Railroad and Warehouse Commission, because they alone actively assail the findings and recommendation of the master.

The first question for consideration is whether or not the orders of the Commission and the acts of the Legislature substantially burden interstate commerce, and the answer to this question must be drawn from an application of the facts which disclose their effect to the established rules of law which govern this subject.

These orders and acts by their terms relate to intrastate fares and rates only. Counsel for the defendants insist that in the police power of the state is vested plenary authority to make and enforce them because they relate to commerce within the state only, while the complainants argue that their enforcement is beyond the power of the state because the effect of their necessary operation is substantially to burden interstate commerce and hence to invade the exclusive domain of the nation, in violation of the commercial clause of the Constitution (article 1, § 8).

The principles and rules of law by which these orders and acts must be tried have been conclusively established by the decisions of the Supreme Court, and it will not be unprofitable to state them here again and to bear them constantly in mind during the consideration of the facts which must determine the issue here presented.

The power to regulate commerce among the states was carved out of the general sovereign power by the people when the national government was formed, and granted by the Constitution to the Congress of the nation. That grant is exclusive. The United States may exercise that power to its utmost extent, may use all means requisite to its complete exercise, and no state, by virtue of any power it
544 possesses, either under the name of the police power or under any other name, may lawfully restrict or infringe this grant, or the plenary exercise of this power; for these are paramount to all the powers of the state and inhere in the supreme law of the land. The fares and rates of transportation of passengers and freight in interstate commerce are national in their character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that the interstate commerce therein shall be free, so far as the Congress has not directly regulated it. Welton v. State of Missouri, 91 U. S. 275, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 485, 507, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691; Hall v. De Cuir, 95 U. S. 485, 490, 24 L. Ed. 547; Wabash, St. L. & P. R. Co. v. Illinois, 118 U. S. 557, 570, 573, 7 Sup. Ct. 4, 30 L. Ed. 244.

To the extent necessary completely and effectually to protect the freedom of and to regulate interstate commerce the nation by its Congress and its courts may affect and regulate intrastate commerce, but no farther.

To the extent that it does not substantially burden or regulate in-

terstate commerce a state may regulate the intrastate commerce within its borders, but no farther.

If the plenary power of the nation to protect the freedom of and to regulate interstate commerce and the attempted exercise by a state of its power to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinge or conflict, the former must prevail and the latter must give way, because the Constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land, and "that which is not supreme must yield to that which is supreme." Brown v. Maryland, 12 Wheat. 419, 448, 6 L. Ed. 678; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Wabash, St. L. & P. Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244; Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962; Houston & T. C. R. Co. v. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772; Cleveland, C., C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 517, 519, 521, 20 Sup. Ct. 722, 44 L. Ed. 868; Mississippi Railroad Commission v. Illinois Central R. Co., 203 U. S. 335, 343, 27 Sup. Ct. 90, 51 L. Ed. 209; Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649.

Thus a part of every interstate transportation is carried on within the state of its initiation and concluded within another state,
545 but neither state may fix or regulate the fares or rates of the part within its borders, because the authority so to do is requisite to the complete preservation of the freedom of, and to the untrammeled regulation of, that transportation, and this power is vested exclusively in the nation. Wabash, etc., R. R. Co. v. Illinois, 118 U. S. 557, 575, 7 Sup. Ct. 4, 30 L. Ed. 244.

The nation and many states provide that carriers may not charge a higher rate for a short haul than for a long haul of like articles in the same direction under similar circumstances. But where the long haul is interstate, although the short haul is entirely within a single state, such a state may not enforce such a law for the same reason. Louisville & Nashville R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416.

A state has the general power to prescribe the terms under which foreign corporations may carry on business within it, but any attempted exercise of that power by statute or otherwise in such a way as to prohibit or substantially to burden the interstate commerce of a foreign corporation within its borders is unconstitutional and void. Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Com-

pany v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. 1, 6-11, 12, 13, 84 C. C. A. 167, 172, 177.

Subject to the constitutional limitation, which has been stated, a state may enact and enforce laws prescribing reasonable fares and rates for and otherwise regulating its intrastate commerce, although the operation of such laws remotely or incidentally affects interstate commerce, such as statutes regulating elevator charges (Munn v. Illinois, 94 U. S. 113, 135, 24 L. Ed. 77; Budd v. New York, 143 U. S. 517, 545, 12 Sup. Ct. 468, 36 L. Ed. 247); requiring track connections at a junction (Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct., 115, 45 L. Ed. 194); prohibiting the operation of freight trains on Sunday, regulating the liability of the initial carrier beyond its line (Richmond, etc., R. R. Co. v. Patterson Tobacco Co., 169 U. S. 311, 18 Sup. Ct. 335, 42 L. Ed. 759); requiring the reasonable stopping of passenger trains at stations (Lake Shore & Michigan South. Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Gladson v. Minnesota, 166 U. S. 427, 431, 17 Sup. Ct. 627, 41 L. Ed. 1064); requiring telegraph companies to receive messages within a state and transmit them with reasonable diligence (Western Union Telegraph Co. v. James, 162 U. S. 650, 656, 16 Sup. Ct. 934, 40 L. Ed. 1105); excluding diseased cattle by means of a reasonable inspection law (Asbell v. State of Kansas, 209 U. S. 251, 256, 28 Sup. Ct. 485, 52 L. Ed. 778); requiring reasonable connections between trains of different companies (Atlantic Coast Line R. R. Co. v. North Carolina Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. Ed. 933); regulating reasonably the operation of passenger trains (Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. Ed. 472); requiring the transfer of cars to a mill near a crossing (Missouri Pacific Ry. Co. v. Larabee Mills Co.,
546 211 U. S. 612, 620, 622, 29 Sup. Ct. 214, 53 L. Ed. 325); prohibiting the possession of game (New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 40, 41, 29 Sup. Ct. 10, 53 L. Ed. 75); requiring locomotive engineers to be examined and licensed (Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. 564, 31 L. Ed. 508; Nashville, etc., Ry. Co. v. Alabama, 128 U. S. 96, 9 Sup. Ct. 28, 32 L. Ed. 352); requiring railway companies to fix their rates annually for the transportation of passengers and freights and to post a printed copy of such rates at their stations (Railroad Company v. Fuller, 17 Wall. 560, 21 L. Ed. 710); forbidding the consolidation of parallel or competing lines of railway (Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. Ed. 849); regulating the heating of passenger cars and directing guards and guard posts to be placed on railroad bridges and trestles and the approaches thereto (New York, N. H. & H. R. R. Co. v. New York, 165 U. S. 628, 17 Sup. Ct. 418, 41 L. Ed. 853); providing that no contract made within the state shall exempt any railroad corporation from the liability of a common carrier or a carrier of passengers which would have existed if no contract had been made (Chicago, Milwaukee & St. Paul Ry. Co. v. Solan, 169 U. S. 133, 18 Sup. Ct. 289, 42 L. Ed. 688); prescribing rates within the state on a single

article, coal (Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 265, 22 Sup. Ct. 900, 46 L. Ed. 1151; Northern Pacific Ry. Co. v. North Dakota, 216 U. S. 579, 30 Sup. Ct. 423, 54 L. Ed. 624).

On the other hand, the laws of a state or the orders of its commissions relating to its intrastate commerce which by their necessary or natural or probable operation have the effect substantially to burden interstate commerce are beyond its powers, violative of the commercial clause of the Constitution, and void. Of this character are statutes imposing burdensome conditions on the landing of passengers from vessels employed in foreign commerce (Henderson v. Mayor of New York, etc., 92 U. S. 259, 268, 23 L. Ed. 543); requiring carriers engaged in interstate commerce to give all persons upon their public conveyances equal rights and privileges in all parts of those conveyances without discrimination or distinction on account of race or color (Hall v. De Cuir, 95 U. S. 485, 486, 488, 490, 24 L. Ed. 547); requiring telegraph companies to deliver dispatches by messenger to the persons to whom they are addressed so far as such a statute attempts to regulate the delivery of such dispatches at places in other states (Western Union Telegraph Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187); prohibiting a higher rate for a short haul entirely within the state than that charged for a longer interstate haul (Wabash, etc., Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244); forbidding common carriers to bring intoxicationg liquors into a state without a certificate that the consignee is authorized to sell such liquors in the county (Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700); prohibiting the sale in a state of fresh meats which have not been taken from animals inspected within the state within 24 hours before they are slaughtered (Minnesota v. Barber, 136 U. S. 313, 322, 329, 10 Sup. Ct. 862, 34 L. Ed. 455); prohibiting the sale of fresh meats from animals slaughtered 100 miles or more
547 from the place at which they are offered for sale, unless they have been previously inspected by local inspectors (Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862); prescribing tolls for the use of a bridge across a river between two states (Covington Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962); requiring a railroad company engaged in interstate commerce to furnish an unreasonable number of cars to shippers in the state upon demand (Houston, etc., Ry. Co. vs. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772); requiring such a company to stop all its regular trains at county seats on its line (Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 517, 519, 20 Sup. Ct. 722, 44 L. Ed. 868); requiring such a company to stop its through fast trains at a specified station in the state (Atlantic Coast Line R. R. Co. v. Wharton, 207 U. S. 328, 334, 337, 28 Sup. Ct. 121, 52 L. Ed. 230); levying a tax "equal to 1 per cent. of its gross receipts" on each railroad lying wholly within the state (Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031); and requiring foreign corporations to pay large fees as a condition of carrying on business entirely intrastate within a state, although by the

orders of the charter board expressly leaving these corporations free to carry on interstate commerce in the state without any condition or restriction (Western Union Telegraph Co. vs. Kansas, 216 U. S. 1, 7, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 163, 30 Sup. Ct. 280, 54 L. Ed. 423).

The acts of the Legislature of Minnesota and the orders of its commission are so general and so far reaching in their effect that there is no doubt that they unavoidably affect the interstate commerce of the companies. In the light of the rules and decisions reviewed, the question here at issue therefore becomes: Do these statutes and orders substantially burden or only incidentally or remotely affect the interstate commerce of the companies? This question, however, may not be answered by the words or terms of the laws and orders, or by a consideration of the intent or purpose of their makers alone. The touchstone to the true answer to the question and the test of the validity of the orders and statutes is their effect upon interstate commerce.

It is the effect, and not the terms or purpose, of state regulations of its local commerce, that determines whether or not they so substantially burden interstate commerce that they violate the commercial clause of the Constitution. And this is a judicial question which each court must determine on its own responsibility on the special facts of each particular case, and in the determination and decision of which it "must obey the Constitution rather than the law-making department of the government." Mugler v. Kansas, 123 U. S. 623, 661, 8 Sup. Ct. 273, 31 L. Ed. 205; Henderson v. Mayor of New York, 92 U. S. 259, 268, 23 L. Ed. 543; Minnesota v. Barber, 136 U. S. 313, 319, 330, 10 Sup. Ct. 862, 34 L. Ed. 455; Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862; Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 522, 20 Sup. 548 Ct. 722, 44 L. Ed. 868; Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 43, 22 Sup. Ct. 277, 46 L. Ed. 416; Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 30, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423.

The counter proposition again presented in this case, that it is only where orders and statutes by their terms or by their construction by state courts substantially or directly regulate interstate commerce, or where by their terms they disclose an intent of their makers so to do that they may be adjudged violative of the commercial clause, has been repeatedly urged upon the consideration of the Supreme Court in the cases just cited, and in many others only to be conclusively denied. In Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031, a case which involved a statute levying a tax upon a road entirely within the state which the court held to be a substantial burden upon interstate commerce and void, it said:

"Neither the state courts, nor the Legislatures, by giving the tax a particular name, or by the use of some form or words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form."

Only last year in the Kansas cases (216 U. S. 1, 56, 30 Sup. Ct. 190, 54 L. Ed. 355), the Supreme Court again repudiated this contention. In those cases a statute of Kansas required of foreign corporations certain fees as a condition of permitting them to conduct intrastate business in that state. The Western Union Telegraph Company, which was carrying on both intrastate and interstate business in Kansas, applied for permission to continue its intrastate business, and the charter board of the state ordered that its application be granted only on condition that it pay the fee prescribed by the statute, and "that nothing herein contained shall apply to nor be construed as restricting in any wise the transaction by the said applicant of its interstate business, nor its business for the federal government, but that this grant of authority and requirement as to payment relates only to the business transacted wholly within the state of Kansas." The officers of the state insisted that this statute and this order were valid because by their express terms they excluded interstate business, applied to intrastate business alone, and disclosed a clear purpose and intent of the Legislature and the board not to obstruct or embarrass interstate commerce in any way. But the Supreme Court reviewed several of its earlier decisions upon this subject, held the statute and the order unconstitutional, and, among other things, said:

"But the disavowal by the state of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such
549 matters the judiciary will not regard mere forms, but will look through forms to the substance of things." 216 U. S. 1, 27, 30 Sup. Ct. 190, 197, 54 L. Ed. 355.

And Mr. Justice White in the Pullman Company's Case, 216 U. S., at page 65, 30 Sup. Ct., at page 236 (54 L. Ed. 378), which involved the same statute, said that one of the propositions conclusively established by previous decisions of the court was that:

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And Mr. Justice Harlan in Ludwig v. Western Union Telegraph

Co., 216 U. S., at page 162, 30 Sup. Ct., at page 285 (54 L. Ed. 423), discussing a similar statute of Arkansas, said:

"According to well-settled rules of statutory construction, the validity of a statute, whatever its language, must be determined by its effect or operation, as manifested by the natural and reasonable meaning of the words employed. Henderson v. Mayor of New York, 92 U. S. 259, 268 [23 L. Ed. 543]. If a statute by its necessary operation really and substantially burdens the interstate business of a foreign corporation seeking to do business in a state, or imposes a tax on its property outside of such state, then it is unconstitutional and void, although the state Legislature may not have intended to enact an invalid statute."

Here, then, is the decisive question upon this branch of these cases. Is the effect of the statutes and orders assailed substantially to burden the interstate commerce of the companies? And we turn to the facts of this case for the answer.

The Northern Pacific Railway Company is a corporation and a common carrier that on June 30, 1906, owned and was operating 7,694 miles of railroad track, of which 1,625 miles are in the state of Minnesota. Its main line extends from Superior, Wis., and Duluth, Minn., which sit side by side at the westerly end of Lake Superior, St. Paul, and Minneapolis, Minn., westerly through North Dakota, Montana, Idaho, Washington, and Oregon, to Seattle, Tacoma, and Portland on the Pacific Coast. From Duluth to other points in Minnesota reached by it the company has an interstate line passing through Wisconsin and a local line that joins the interstate line at Carlton, 20 miles westerly from Duluth. Its main line crosses the western line of Minnesota at Moorhead, Minn., and Fargo, N. D., 250 miles from St. Paul. It has two branch lines, which cross the western line of the state at East Grand Forks, Minn., and Grand Forks, N. D., 320 miles from St. Paul, and at Breckenridge, Minn., and Wahpeton, N. D., 237 miles from St. Paul, respectively.

The Great Northern Railway Company is a corporation and a common carrier that owned and was operating lines of railway comprehending on June 30, 1906, 8,528 miles of track, of which 2,779 miles are in Minnesota. Its main lines extend from Superior, Wis., and Duluth, Minn., in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, to the cities of Seattle and Portland. Its line between Duluth, Minn., and other points in Minnesota, reached by it, passes through the state of Wisconsin. It has five lines of railway which cross the western line of Minnesota and extend westerly into or through other states, one from Minneapolis by way of Willmar, which crosses at Breckenridge, Minn., and Wahpeton, N. D., 214 miles from St. Paul; one from Minneapolis by way of Barnesville, which crosses at Moorhead, Minn., and Fargo, N. D., 241 miles from St. Paul; one from Duluth by way of Crookston, which crosses at East Grand Forks, Minn., and Grand Forks, N. D., 296 miles from Duluth; one which leaves the Willmar main line at Benson and crosses the Minnesota line at Nassau, 173 miles from St. Paul; one which leaves the main line at Willmar and crosses the

Minnesota line at Jasper, Minn., 218 miles from St. Paul; and it also has a branch line wholly within the state of Minnesota, which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

The Minneapolis & St. Louis Railroad Company is a corporation and a common carrier that owned and operated lines of railroad comprehending on the 30th day of June, 1906, 632 miles of track, and that operated by means of leases or trackage rights 396 miles of track. Its main line extends from St. Paul and Minneapolis, Minn., westerly by way of Winthrop, Minn., to Lebeau, S. D., from St. Paul and Minneapolis, southwesterly by way of Winthrop, Minn., to Storm Lake, Iowa, and from St. Paul and Minneapolis, southerly by way of Albert Lea, Minn., to Des Moines, Iowa.

The whole railroad properties of each of these companies has constituted and still constitutes a single system, and has been and is operated by each of said companies as such. The cars, engines, and supplies of each company customarily have been and are used upon its system without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to the state on the same train and in the same car, and interstate freight and freight local to a state on the same train, and if less than car load freight in the same car. There has never been any separation, and it is impracticable in the exercise of any fair economy to make and maintain any separation in the business of transporting interstate passengers and passengers local to the state, or between interstate freight and freight local to a state.

By far the larger proportion of the business of each of these companies is interstate, and by far the larger proportion of the business of each of these companies within the state of Minnesota is interstate. In the year 1906 the freight business of the Northern Pacific Company local to Minnesota was 2.67 per cent. of its entire freight business and 12.33 per cent. of its freight business touching the state and its passenger business local to the state was 5.79 per cent. of its entire passenger business and 67.21 per cent. of its passenger business touching the state.

The conditions attending the transportation of passengers and of freight have been and are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota, and South Dakota reached by the lines of railway operated by either of these companies, whether such transportation has been or is a business local to a state or interstate between any or all of these states.

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Prior to the orders and acts here in question the fares and rates in force upon these lines of railway for the transportation of passengers and freight were lawful, for they had been adopted in accordance with the provisions of the act of Congress, were relatively fair, and were not discriminatory between intersate business and business local to any state.

Any substantial change in the basis of rates thus established and in force, or in any particular rate, due only to the fact that the trans-

portation was interstate, or that it was local to a state, would have been actual, undue, and unjust discrimination in fact and any substantial difference in rates for the transportation of passengers, merchandise, or commodities maintained by either of said companies as between traffic local to the state and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue, and unjust discrimination in fact.

Substantially all commodities and property which are the subject of transportation are classified and arranged in 10 groups with reference to their general character and value, and the cost of transportation thereof and this classification with modifications from time to time made therein has long been used by carriers in the West and Northwest as a basis for fixing rates. Commodities of each class take the same rate under like conditions, and this classification is called the "Western classification." In Minnesota, however, many commodities amounting to several hundred have by the action of the Minnesota Commission been removed from this Western classification, and given special rates, which are called "commodity rates," or have been reduced in class, so that the Western classification in Minnesota is in many respects different from the Western classification in general use. The Commission by its order made on September 6, 1906, prescribed a schedule of maximum rates for the transportation within the state of Minnesota of articles covered by this Western classification as modified by the intervention of the Commission, and required the railway companies to observe these rates. This schedule was such that each rate for each class for any distance bore such an exact relation to each other rate that, given one rate out of the schedule, any other rate could be ascertained by mathematical calculation, and without reference to the schedule itself. This is the plan of the schedule.

For first-class merchandise an allowance of 11.2 cents per cwt. is made for terminal charges, and for each five miles or fraction thereof up to 200 miles .98 of a cent for hauling charge, so that for a distance of five miles the rate is 12 cents per cwt., for a distance of 10 miles the rate is 12.98 cents per cwt., and for a distance of 200 miles the rate is 50.22 cents per cwt. After a distance of 200 miles is reached, .98 of a cent is allowed per cwt. as a hauling charge for each 10 miles or fraction thereof up to 400 miles, so that, the rate for 200 miles being 50.22 cents per cwt., the rate for 210 miles is 51.20 cents, for 220 miles the rate is 52.18 cents, and for 400 miles the
552 rate is 69.82 cents per cwt. After a distance of 400 miles is reached, .98 of a cent is allowed as a hauling charge per cwt. for each 20 miles or fraction thereof up to 500 miles; so that, the rate for 400 miles being 69.82 cents per cwt., the rate for 420 miles is 70.80 cents, and the rate for 500 miles is 74.72 cents per cwt. There are 10 classes of merchandise provided for in this schedule. The rates for classes other than the first class are a fixed per centum of the corresponding rates for the first class, those for the second class being 83 1/3 per cent., for the third class being 66 2/3 per cent., for the fourth class being 50 per cent., for the fifth class being 40 per cent., for class A being 45 per cent., for class B being 35 per cent., for class C being 30 per cent., for class D being 25 per cent.,

and for class E being 20 per cent. The rates thus prescribed are maximum terminal rates, and may be increased by 5 per centum for shipments between stations, neither of which is a terminal or a distributing station. The reduction in merchandise rates made by this order of September 6, 1906, was from 20 per cent. to 25 per cent. of the rates theretofore in force. Notwithstanding the extent of this reduction, all the railway companies interested put the rates prescribed by this order into effect on November 15, 1906, and they have ever since been, and still are, maintained by all the companies concerned as maximum rates for the transportation within the state of merchandise covered by the order.

On May 3, 1907, the Commission made an order supplemental to that of September 6, 1906, for the purpose of securing more favorable in-rates to a number of jobbing centers in the state of Minnesota other than St. Paul, Minneapolis, and Duluth. This order had the effect to substantially reduce the previously existing rates to the extent in the case of the Northern Pacific Company of 13.577 per cent. Nevertheless, the railroad companies put in force and have since maintained the rates prescribed by this supplemental order.

The rates prescribed for the articles specified in this Western classification as modified are called "merchandise rates."

By chapter 232 of the Laws of Minnesota 1907, approved April 18, 1907, the Legislature of Minnesota created seven new classes of commodities numbered 11 to 17. Wheat and 13 other articles were placed in class 11, corn and 37 other articles in class 12, lumber and 5 other articles in class 13, sheep in double-decked cars and cattle in class 14, sheep in single-decked cars and hogs in class 15, hard coal in class 16, and soft coal in class 17; and it prescribed and required the companies to observe maximum rates for the transportation of these articles in Minnesota which were on the average 7.37 per cent. below those then lawfully in force, and the rates on grain and coal that were then in force on the Northern Pacific and Great Northern lines had been reduced by those companies in the preceding September and October about 10 per cent. These rates are called "commodity rates" and the companies, in view of the severe penalties denounced for a failure to comply with the act, were about to put them in force when they were enjoined at the suit of the complainants.

By chapter 97 of the Laws of Minnesota 1907, the Legislature prescribed and required the companies to observe maximum rates of 2 cents a mile for passengers over, and 1 cent a mile for pas-
553 sengers under, 12 years of age for the transportation of such passengers within the state of Minnesota. This law required a reduction of 33⅓ per cent. of the then established lawful rates, and the companies, in view of the severe penalties prescribed for a violation of this law, put these rates in force and have since maintained them.

The average reduction of fares and rates required by these orders and acts were:

(1) On general merchandise 20 per cent. to 25 per cent. by the order of September 6, 1906.

(2) In in-rates to distributing stations amounting in the Northern Pacific case to 13.58 per cent.

(3) In maximum rates on grain, lumber, live stock, coal, etc., 7.377 per cent.

(4) In maximum rates on passengers 33⅓ per cent.

Superior, Wis., and Duluth, Minn., are situated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, N. D., and East Grand Forks, Minn., Fargo, N. D., and Moorhead, Minn., and Wahpeton, N. D., and Breckenridge, Minn., have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets, and receive and ship the same kinds of articles. Any substantial difference in rates as between the cities composing each pair would seriously damage, if not wholly destroy, the commerce of the city given the higher rate, and would be an undue and unjust preference and advantage in fact for its neighboring city.

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the company's property in Superior.

Merchandise Rates.

The schedule comprehended within the order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent. to 25 per cent. lower than those theretofore established by the Northern Pacific and Great Northern Companies and maintained by them up to the time of the taking effect of the order for transportation in Wisconsin, Minnesota, and North Dakota, regardless of whether such transportation was local to either state or interstate between any two of them. If
554 these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the order, the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed

54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for transportation between Minnesota and an adjoining state and the rates prescribed by the order for transportation within the state.

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo, and Wahpeton, N. D., and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead, and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo, and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead, and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1 cents per cwt., and on fifth class from 27 cents per cwt. to 21.7 per cwt.

These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth, Fargo, Grand Forks, and Wahpeton could not have competed with Moorhead, East Grand Forks, and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks, or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions, although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line.

Moorhead, Minn., Fargo and Bismarck, N. D., Billings and Butte, Mont., are so-called "jobbing centers." Prior to the taking effect of the order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of car load rates from St. Paul, Minneapolis, and Duluth to these centers
555 and the less than car load rates out from these centers to the territory geographically tributary to them, respectively, had been such as to compare favorably with rates in and out of their local competitors as well as with less than car load rates from St. Paul, Minneapolis, and Duluth into the territory geographically served by them, respectively. The order of September 6, 1906, as supplemented by the order of May 3, 1907, substantially reduced

car load rates from Duluth, St. Paul, and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry, not only as against Fargo unless car load rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul, and Minneapolis unless less than car load rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction, unless accompanied by a corresponding reduction in car load rates to Fargo from the eastern terminals, would have served to build up Moorhead at the expense of Fargo, and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of car load rates into Moorhead and less than car load distributing rates out on the one hand, and less than car load distributing rates from Duluth, St. Paul, and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in car load rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and them, unless car load rates from the eastern terminals to Bismarck and less than car load rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on car load lots from the eastern terminals to Bismarck should be correspondingly reduced. And so on, from distributing point to distributing point.

Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same, because the rate for 250 miles includes two terminal charges, and, if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the order of September 6, 1906, and now maintained by the company between St. Paul and Moorhead, discloses that the Commission made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire

556

haul. For example, the present rate maintained by the Northern Pacific on class E, merchandise from St. Paul to Miles City, 743 miles from St. Paul, is 39 cents per cwt. The rate to Moorhead, based on the proportion of 39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The order allows only 11 cents per cwt. from St. Paul to Moorhead, in which, of course, are included two full terminal charges. Maintaining rates comparison of which shows this result involves substantial, undue, and unjust discrimination in fact against the interstate localities. And a reduction of the interstate rates compelled by the reduction of the state rates substantially burdens interstate commerce and restricts its freedom.

After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many points in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

As a matter of fact, the reasons for such reduction were to prevent transshipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and, as to less than car load lots, to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto.

It is one of the fundamental dogmas of rate making that the haulage charge per mile shall not increase with increasing distance, if conditions be the same. The order of September 6, 1906, promulgates a schedule which for first-class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per 5 miles up to 200 miles, then a haulage charge of .98 cent per 10 miles for added distance up to 400 miles, and then a haulage charge of .98 cent per 20 miles up to 500 miles—the limit of distance covered by the order. Both the terminal charge and the haulage charge allowed for the other merchandise classes are a fixed percentage of those allowed for first. Under this schedule, a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48 miles, at the rate of .98 cent per 10 miles when Moorhead is reached. If
557 this same haulage charge of .98 cent per 10 miles be applied for the remaining distance of the haul from St. Paul to Spokane, Wash., 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would

produce a rate from St. Paul to Spokane on first-class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the Spokane Rate Case has fixed the reasonable rate on first-class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the state carried on over the same rails and under the same conditions, and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line.

For more than 25 years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte, and between its eastern terminals and localities intermediate between them and Butte, and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph, and Kansas City on the east, and from San Francisco, Sacramento, and Los Angeles on the west. Butte has been as the hub of a wheel, with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission made rates between its eastern terminals and Moorhead, and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission made rates between its eastern terminals and Moorhead, it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific Coast. In this way the reduction of the rates in Minnesota either imposes a substantial burden upon, and a regulation of, interstate commerce or compels unjust discrimination therein.

Prior to the taking effect of the order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them,
558 respectively, and these rates were in force at the time of the taking effect of the order. After the rate prescribed by the order were installed, the sum of the locals on St. Paul from

all localities southerly and easterly of Minnesota to all localities in Minnesota westerly of St. Paul and Minneapolis reached by these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul, because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the theretofore established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rates prescribed by the order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid this discrimination, the companies forthwith, after the taking effect of the order, withdrew the then existing interstate rates, and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rates from Chicago to Wadena, Minn., on first-class merchandise, was $1.09 per cwt. The sum of the locals on St. Paul after the taking effect of the order was $1.004. The present through rate is $1.004, being a reduction of 8.6 cents per cwt. In other words, the reduction in the Minnesota rates compelled an unjust discrimination in interstate rates, or submission to the imposition of a substantial burden on interstate commerce.

Conditions attending transportation are substantially the same in Minnesota and North Dakota, whether the transportation is local to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have prior to the taking effect of the order maintained an equable basis of rates in the territory which these two states compose without regard to state line. For example, the interstate rates from Moorhead, Minn., westerly into North Dakota, have been the same as from Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify a different basis of rates for east-bound to that for west-bound transportation.

Prior to the installation of the rates prescribed by the order, the rate per cwt. of first-class merchandise for 100 miles, for example, out of Moorhead, whether westerly, into North Dakota or easterly, into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of first-class merchandise 30.6 cents. This disparity of rates for transportation under substantially similar conditions, and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota, and a corresponding prejudice and disadvantage to the interstate westwardly localities in North

Dakota. If the companies maintaining this relation of rates,
559 unfair in fact, are to continue to maintain the rates prescribed by the order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota.

The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the order, the rate per cwt. of first-class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact.

The order of September 6, 1906, prescribes a basis of rate making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul to Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, S. D., 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul to Nassau, the border Minnesota town. Between St. Paul and Willmar, Minn., 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for first class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each 10 miles beyond 200 miles, and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per 10 miles for first class.

When the line between Minnesota and South Dakota is
560 reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that, unless undue and unust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and different classes must be maintained on one line as on the other, and that, notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached, and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates.

Since the taking effect of the order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota, and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists, and constitutes undue and unjust discrimination in fact.

St. Cloud, Minn., is on the Barnesville main line of the Great Northern, and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minn., is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's order of May 3, 1907. Whether discrimination, in fact, exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and, if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as for the same distance westerly of St. Cloud. Because they are distributing centers, rates from Fergus Falls

to points within that distance westerly should be the same as
561 from St. Cloud to points of equal distance westerly. Rates on articles covered by the order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles, are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact, not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

Commodity Rates.

The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie wholly (excepting certain limited tracts in which grain cannot be grown, such as the Bad Lands of North Dakota) within grain fields, and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis, and Superior.

Shipments of coal originate at the head of the Lakes—that is to say, Duluth, Minn., or Superior, Wis.—and find their destination at all localities served by the companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls, and other points in Minnesota, and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota, and eastern Montana, and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota, or Minnesota, or whether it finds its termination at one of the Minnesota terminals of the companies, or at Superior, Wis.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly, whether the shipment originates at a Minnesota point or at Superior, Wis., or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal, whether the shipment originates at Duluth, Minn., or at Superior, Wis., and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for the transportation of lumber, whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock, whether the shipment originates in Minnesota, North Dakota, or eastern Montana involves an undue and unjust prejudice and disadvantage, in fact, against the localities subject to the higher basis of rates, and an undue and unjust prefer-

ence and advantage in fact to the localities given the lower basis. Establishing the rates prescribed by chapter 232, Gen. Laws
562 1907 (Rev. Laws Supp. 1909, §§ 2007–11 to 2007–17), and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota, and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana, would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers, and localities transacting the interstate business, and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota, and Minnesota points and Superior to a substantial parity with the basis prescribed by chapter 232, in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business, as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum car load of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum car load.

Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan, and Milwaukee, Wis., Gladstone, Mich., Chicago, Ill., the Peoria, Ill., district, the Springfield, Ill., district, the Streator, Ill., district, and the La Salle, Ill., district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan, and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota, unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by chapter 232 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed, unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

Interstate rates on cattle, hogs, sheep, and coarse grain would be affected by the rates prescribed by chapter 232 in the same manner as rates on wheat and coal.

563 Under the milling in transit privileges, so called, owners of wheat at any point in Minnesota, North Dakota, or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minneapolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis, and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis, a like milling in transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis, and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling in transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling in transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless, then, all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling in transit privilege shall be reduced to a substantial parity with the reduced milling in transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state, and wheat in general will as a result of this advantage go to Minneapolis.

Passenger Rates.

Prior to the taking effect of chapter 97, Gen. Laws 1907 (Rev. Laws Supp. 1909, §§ 2007–1 to 2007–2), the general basis of rates for the transportation of passengers between any two points on the Northern Pacific system had been for some years 3 cents per mile for passengers of 12 years of age and over, and 1½ cents per mile for passengers under 12 years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota 2 cents per mile for passengers of 12 years of age or over and 1 cent per mile for passengers under 12 years of age.

After the maximum rates prescribed by chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97, the revenue for passenger business on the Northern Pacific between Moorhead and other

Minnesota points increased 647 per cent. over that for the corresponding month of the preceding year, while, eliminating Moorhead business, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after the taking
564 effect of chapter 97, there were sold by the Northern Pacific Company 4,037 tickets between St. Paul or Minneapolis, on the one hand, and Moorhead or East Grand Forks, on the other, as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis, on the one hand, and Grand Forks and Fargo, on the other, as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis. In those months in 1907 there were 1,168 full cash fares and 82 cash half fares so collected.

Thus the necessary, immediate, direct effect of the operation of chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed, and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless on a through ticket, and against a passenger who was compelled to use a sleeping car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs establishing the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary, immediate, and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust dis-

crimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume.

565 Prior to the taking effect of the respective orders complained of and of the two-cents maximum passenger fare law, the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota, and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the companies and each of them for the transportation of commodities covered by chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective orders destroyed that fairness as to merchandise rates, the installation of the two-cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by chapter 232 would destroy it as to rates on commodities covered by it.

It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific, and Minneapolis & St. Louis Companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota, than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of the value of property in Minnesota, and the serious impairment of the value of the property of all business men, as well as that of the carriers themselves in the neighboring states.

Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification, or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carriers serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city.

If it should be necessary for the companies involved, in order that discrimination may be avoided, or in order that the companies may preserve the volume of their respective businesses in interstate
566 transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the acts and orders complained of, and to extend the rates for their interstate long-haul business upon the principle provided in said acts and orders, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30, 1906, the last fiscal year prior to the taking effect of the order of September 6, 1906, from its interstate business in transportation of commodities covered by chapter 232 alone, if the basis prescribed by chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the order of September 6, 1906, if the basis prescribed by the order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two-cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the acts and orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the acts and orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss in revenue of the Northern Pacific Company, if the basis prescribed by chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and, if the two-cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the acts and orders complained of, of $2,142,094.16.

The facts which have been recited were found by the master, and the foregoing statement of them is, with rare exceptions, in his clear and concise language. Many exceptions are leveled at these findings, but they are sustained by clear and convincing evidence, and the only question remaining here is: Do they justify the conclusion that the effect of the acts and orders prescribing the Minnesota maximum fares and rates is to impose a substantial burden upon or to regulate or to discriminate against interstate commerce, or to create unjust discrimination between interstate localities? Counsel for the defendants insist that this question should be answered in the negative.

They argue that the prescription and enforcement of these fares

and rates cannot constitute an unconstitutional burden upon or interference with interstate commerce because the orders and acts relate to commerce within the state only and the state has power to
567 regulate its purely local commerce. This contention, however, cannot be sustained because, as has been demonstrated in the earlier part of this opinion, if, by their natural or necessary operation, these acts and orders have the effect substantially to burden interstate commerce, they fall under the ban of the Constitution and beyond the power of the state whatever their terms or the intent of their makers may have been.

They say that, while the reduction of the local fares and rates may induce the companies to reduce their interstate rates and fares across the borders of the state to a parity with the local rates, this is the voluntary act of the companies not directly required by the laws and orders. There are, however, known and inexorable laws of commerce, and one of them is that transported articles will move at the lowest available rates. Reduce local fares and rates so that fares and rates in interstate commerce across the borders of the state are substantially higher than the sums of the locals over the Minnesota stations on or near the state boundaries and the companies must reduce their interstate fares and rates on that portion of their interstate commerce affected by the sums of the locals over the Minnesota borders to a substantial parity with the sums of the locals or their interstate commerce affected thereby will unavoidably become intrastate commerce and move at the sums of the locals. There is nothing voluntary on the part of the companies in the loss or burden imposed upon them by these reductions. That they must suffer whether they reduce their interstate rates or maintain them and permit the transformation of their affected interstate commerce into intrastate commerce by rebilling and local contracts so that it can pass at the sums of the locals. The loss of the difference in revenue between that derived from their former interstate rates and that derived from the sums of the locals is a direct and unavoidable burden upon their interstate commerce imposed by the acts and orders stated which the companies may not by any device avoid.

Moreover, the acts and orders making these intrastate reductions necessarily operate to discriminate against interstate commerce and the right of the companies to carry it on, and in that way constitute a direct burden upon such commerce. Mr. Justice White said in the Pullman Company's Case, 216 U. S. at page 65, 30 Sup. Ct. at page 236 (54 L. Ed. 378), that, though a power exerted by a state may not abstractly impose a direct burden on interstate commerce, yet such exertion will be a direct burden upon such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. If the companies exercised their right to maintain and did maintain their former interstate rates upon that portion of their interstate commerce affected by the local Minnesota rates, they lost to local commerce that interstate commerce, because it passed by rebilling and local contracts at the sums of the locals. This necessary effect of the local maximum rates was a direct discrimination against

interstate commerce and the right to conduct it, and hence a direct burden upon that commerce. If, on the other hand, to avoid this discrimination the companies reduced their rates, that reduc-
568 tion was a like direct burden, and no course was open to them whereby they could exercise their constitutional right to conduct their interstate commerce free from the direct regulation thereof effected by these acts and orders.

Another vicious and inevitable effect of these acts and orders is the unjust discrimination in fares and rates between localities in Minnesota and those beyond its borders which they effect. Moorhead, Minn., and Fargo, N. D., are practically the same distance from St. Paul, Minneapolis, and Duluth, respectively. They have long received, and they ought to continue to receive, the same fares and rates in and out. This is also true of Duluth, Minn., and Superior, Wis.; Breckenridge, Minn., and Wahpeton, N. D.; East Grand Forks, Minn., and Grand Forks, N. D. These acts and orders reduced the fares to and from the Minnesota towns of these pairs from and to other Minnesota points 33⅓ per cent., and the freight rates from 7 per cent. to 25 per cent., while the former interstate fares and rates from and to the other towns of the pairs remained in effect, as to commodity rates under the protection of the injunction of this court, and would have continued in effect in the matter of merchandise rates and the passenger fares had not the prohibition of discriminations between localities by the interstate commerce law and the laws of trade which have been considered compelled the companies to reduce their interstate rates to parity with the local rates prescribed. The discrimination thus wrought by these acts and orders between the towns mentioned on the state lines is but illustrative of the undue preference and advantage the local reductions gave to Minnesota cities and towns, and the unreasonable prejudice and disadvantage to which they subjected the towns and the cities of other states similarly situated in their vicinity.

Congress by the "act to regulate commerce" (24 Stat. 379) forbade the companies to make or give any undue or unreasonable preference or advantage to any party or locality, or to subject any party or locality to any unreasonable prejudice or disadvantage in any respect whatsoever, and the prevention of the discrimination thus prohibited was one of the main purposes of this legislation. The first section of the act, however, contained this provision:

"Provided, however, that the provisions of this act shall not apply to transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state, and not shipped to or from a foreign country from or to any state or territory aforesaid."

The result was that the act of Congress forbade, and the acts and orders of the officers of Minnesota compelled, this discrimination between localities under the penalty of the surrender by the companies of a substantial part of their interstate commerce or of the revenue therefrom. Counsel for the defendants argue, however, that this radical discrimination is not forbidden by the interstate commerce law because it is a discrimination wrought, not by an undue differ-

ence between intrastate rates of which they say the state has exclusive jurisdiction, nor by an undue difference between interstate rates of which they admit the nation has exclusive jurisdiction, but by an undue difference between intrastate rates and interstate rates, and they contend that over the discrimination thus wrought neither
569 state nor nation has any power. The argument, however, again disregards the broad and fundamental difference between the power of the state over intrastate commerce and the power of the nation over interstate commerce. The state may regulate its intrastate commerce so far only as the exercise of its power does not substantially burden or regulate or discriminate against interstate commerce, but no farther. A state may not prohibit or regulate discrimination between interstate and intrastate rates in such a way as substantially to burden or regulate interstate commerce, as, for instance, by the prohibition of a higher charge or rate for a short haul wholly within the state than for a long haul that includes the short haul and extends into another state, because such action burdens and regulates interstate commerce. Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416. By the same mark, because it is a direct regulation of interstate commerce, the nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the nation by the Congress and its courts may affect and regulate intrastate commerce. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 331, 85 C. C. A. 27, 37, 15 L. R. A. (N. S.) 167; Brown v. Maryland, 12 Wheat. 419, 448; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Gulf, Colorado, etc., Ry. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Interstate Commerce Commission v. Detroit, etc., Ry. Co., 167 U. S. 633, 642, 17 Sup. Ct. 986, 42 L. Ed. 306; State Freight Tax Case, 15 Wall. 232, 275, 280, 21 L. Ed. 146; Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 1, 8, 24 L. Ed. 708; Chy Lung v. Freeman, 92 U. S. 275, 280, 23 L. Ed. 550; Railway Co. v. Husen, 95 U. S. 465, 471, 472, 473, 24 L. Ed. 527; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 736, 737, 5 Sup. Ct. 739, 28 L. Ed. 1137; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 479, 480, 481, 484, 485, 488, 489, 490, 491, 507, 508, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Lyng v. Michigan, 135 U. S. 161, 166, 10 Sup. Ct. 725, 34 L. Ed. 150; Norfolk, etc., Ry. Co. v. Pennsylvania, 136 U. S. 114, 115, 118, 120, 10 Sup. Ct. 958, 34 L. Ed. 394; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649; Osborne v. Florida, 164 U. S. 650, 655, 17 Sup. Ct. 214, 41 L. Ed. 586; Caldwell v. North Carolina, 187 U. S. 622, 623, 23 Sup. Ct. 229, 47 L. Ed. 336. "This power," said Chief Justice Marshall, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified ob-

jects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power
570 as are found in the Constitution of the United States." Gibbons v. Ogden, 9 Wheat. 1, 189, 194, 197, 6 L. Ed. 23; Lottery Case, 188 U. S. 321, 346, 347, 359, 23 Sup. Ct. 321, 47 L. Ed. 492. The power therefore to prohibit the railroad companies from making or permitting any undue discrimination between localities and parties by unreasonable differences between intrastate and interstate rates was vested in Congress, and no acts or orders of the state or its officers could justify such a discrimination. If, as the Supreme Court held in the Eubank Case, a state has no authority to suppress such a discrimination, much less has it the power to create and maintain it.

But counsel insist that, if Congress had the power to forbid this discrimination, it did not exercise it because it declared in the proviso to section 1 that the provisions of the interstate commerce act should not apply to transportation wholly within one state. But the main object of the act was to prevent every undue discrimination between parties and between localities. When it was enacted there was a crying evil in such discriminations, an insistent public demand for the remedy thereof, and a determined effort by the legislators to make the prohibitions of such discriminations as broad, searching, and effective as the Congress had the power to make them. It had, as we have seen, ample authority to forbid discriminations wrought by differences between intrastate and interstate rates, but none to prohibit discriminations caused by differences in rates for transportations wholly within a state. The act prohibits any undue discrimination in any respect whatever between localities under similar circumstances and conditions by any common carrier subject to its provisions. In the light of these facts, the natural and reasonable construction of the proviso in section 1 is that it was inserted out of abundance of caution to make sure that the broad terms of the act did not go beyond the constitutional power of the Congress and directly regulate intrastate commerce more than was necessary completely to regulate interstate commerce, and that it has no farther effect upon the subject of discrimination now under discussion. The evil the act was passed to remedy, the main purpose of its passage, the public demand for a prevention of all discriminations, the patent efforts of the legislators to meet this demand, and the broad terms of the prohibitions themselves compel the conclusion that the Congress intended to exercise, and that by this act it did exercise, its constitutional power to prevent discriminations of the character here in question to its utmost extent, and that the companies were and are prohibited thereby from making or maintaining the unjust discriminations between localities which the maintenance of their former lawful interstate fares and rates and the intrastate rates prescribed by the acts and orders of the officers of the state would necessarily effect. Reliance Textile & Dye Works v. Southern Ry. Co., 13 Interst. Com. R. 48, 54.

The next suggestion is that, if the prohibition of the interstate commerce act applies to discriminations between intrastate and interstate rates, it applies only when the transportation is under substantially similar circumstances and conditions and the acts and orders in question render the circumstances and conditions under which the intrastate rates are charged dissimilar from those which condition the interstate rates. But state laws and orders effecting discrimi-
571 nations forbidden by acts of Congress cannot be held by themselves to create such dissimilar conditions as to warrant the maintenance of such discriminations.

Finally, counsel cite, to overcome the proof of the substantial burden and the direct regulation of interstate commerce effected by the acts and orders in this case, with which this record teems, these words from the opinion of Mr. Justice Brewer in Ames v. Union Pacific Ry. Co. (C. C.) 64 Fed. 172:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the statute; but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates, any more than an act of Congress prescribing interstate rates would legally work a change in local rates. Railroads cannot plead their own convenience, or the effect of competition between themselves and other companies, in restraint of the otherwise undeniable power of the state."

The reduction of local rates does not interfere with interstate rates "as a matter of law," yet it may do so as a matter of fact. Whether or not the general and sweeping reductions in local rates in Minnesota necessarily interfere with interstate rates and interstate commerce is in this case, as it must be in every case, a question of fact. The facts which determine that question in this case have been set forth in this opinion at great length, because it is upon them, and not upon legal inferences, that the answer to the question, whether or not the effect of the necessary operation of the acts and orders challenged is substantially to burden interstate commerce, now rests. Those facts are that it was not for "their own convenience," but at great inconvenience and loss, not on account of the "effect of competition between themselves and other companies," but because these acts and orders, the prohibition of discrimination between localities by the interstate commerce act and the laws of trade, forced them to do so, that the defendants reduced their interstate commerce rates to a parity with the local rates and submitted to the loss of interstate revenue this action entailed. The opinion of Mr. Justice Brewer in the Ames Case is inapplicable to the cases in hand because no such array of condemnatory facts was ever submitted to him in that case, and it is perhaps not too much to say that no case has been found in the books in which any such proof of the unavoidable effect of general reductions of intrastate rates to substantially burden and directly regulate interstate commerce has ever been presented.

Minnesota, North Dakota, South Dakota, and Wisconsin embrace a vast region 1,000 miles in extent, traversed by the railroads of the defendant companies, which produces the same things shipped to the same markets and consumes the same things bought in the same markets. The conditions of the transportation of passengers and freight in interstate traffic and also in intrastate traffic have been and are identical, and a relative, fair, and equable relation between fares and rates in interstate commerce and fares and rates in intrastate commerce had been maintained before the acts and orders here challenged were made. The railroad companies had established
572 and were collecting their interstate fares and rates pursuant to the act to regulate Commerce enacted by the Congress of the United States. Those fares and rates were lawful, hence presumptively reasonable, and neither the officers of the state of Minnesota nor any court, state or federal, could legally adjudge them unreasonable until they had been denounced by the Interstate Commerce Commission, Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S., 426, 27 Sup. Ct. 350, 51 L. Ed. 553. The fares and rates and the traffic in intrastate commerce were so inextricably interwoven with the fares and rates and the traffic in interstate commerce that a general and substantial reduction of the fares and rates in either by its necessary operation compelled a similar reduction in the other, because the interstate commerce act forbids the discrimination that would otherwise result and because traffic will move only at the lowest available rates. The subject of the fares and rates in interstate commerce through this region is national in its character and capable of regulation by uniform rates, and the railroad companies are therefore free to make and regulate them subject only to the orders of the Interstate Commerce Commission. The officers of the state of Minnesota by the acts and orders challenged made a general and sweeping reduction of 33⅓ per cent. in passenger rates within that state, of 20 per cent. to 25 per cent. in rates on general merchandise, of 7.37 per cent. on grain, coal, live stock, and lumber, and of 13.58 per cent. on in-rates to distributing points.

The effect of the necessary operation of these acts and orders was substantially to burden and directly to regulate the interstate commerce of the companies by causing the transformation of that part of their transportation upon which their former interstate rates were higher than the sums of the locals over the border towns in Minnesota into local commerce at those sums, or by causing the companies to reduce their interstate fares and rates affected by the reduced local fares and rates to a parity therewith. This effect was unavoidable because the interstate commerce law prohibited the companies from giving to Minnesota towns and cities the undue and unreasonable advantage and from subjecting the cities and towns of other states in the vicinity to the undue and unreasonable disadvantages which a maintenance of their former interstate fares and rates and the prescribed local fares and rates would have wrought, and because passengers and freight will move at the lowest available rates.

This effect was not like that of the directions concerning the movements of particular trains, the inspection of animals to guard against disease, the reduction of intrastate rates on one or a few articles of commerce, and similar regulations which were sustained in the cases in the earlier part of this opinion and in others of like character, because their effect upon interstate commerce was so incidental and remote as to be negligible. The effect of these acts and orders was substantial, direct, controlling, and compelling. They are general and sweeping in their terms, they reduce the fares and rates on the great body of intrastate commerce in the state of Minnesota from 7 to 33⅓ per cent., and their inevitable effect is directly and unavoidably to regulate much of the
573 interstate commerce of the defendant companies and unavoidably to cause each of them great loss of revenue therefrom.

No case has been found in the books in which the facts disclose a more substantial burden imposed upon interstate commerce by the acts or orders of the officers of any state than that which the effect of the necessary operation of these acts and orders entails upon the interstate commerce of these companies. If in the early proceedings in the Northern Pacific Case the Supreme Court was moved to say, of the issue whether the necessary effect of these acts and orders was to interfere with and to regulate interstate commerce, "the question is not, at any rate, frivolous," how, now, that their necessary effect upon that commerce has been indisputably proved to be not only general and substantial, but controlling and compelling, may they escape the ban of the Constitution? If one state might by such radical reductions of its local fares and rates below legal interstate fares and rates constitutionally use the laws of trade and the prohibition of discriminations in the interstate commerce law to force like reductions of interstate rates, all states might do so, and the power of the states to regulate fares and rates in interstate commerce would be supreme and that of Congress and the Interstate Commerce Commission inferior and futile. Such does not seem to be the law.

Each of the acts and orders challenged has the natural and necessary effect substantially to burden and directly to regulate interstate commerce, to create undue and unjust discriminations between localities in Minnesota and those in adjoining states, and it is unconstitutional and void.

The master also found that the maximum state rates prescribed by these acts and orders produced incomes sufficient to pay the cost of earning them, taxes and just returns upon the real values of the Minnesota properties of the defendants respectively used to carry on their intrastate commerce in that state. The actual earnings, taxes, and cost of conducting transportation during the year ending June 30, 1908, the year when the fares and all the rates, except the commodity rates, were in actual operation, were proved, and the master found that the net freight income for that year of the Northern Pacific Company from its Minnesota intrastate freight business yielded an annual return of only 1.941 per cent. on the value of its property used to produce that income, and that if the commodity

rates had been in operation this percentage would have been still smaller, that its net income from its intrastate passenger business was sufficient to yield an annual return of only 4.2 per cent., and its net income from all its intrastate business in Minnesota an annual return of only 2.909 per cent. of the values of its property assignable thereto respectively. He reported that the net income of the Great Northern Railway Company from its Minnesota intrastate freight business was sufficient to yield an annual return of only 5.468 per cent. of the value of its property assignable to that business, and if the commodity rates had been in force the return would have been less than 5 per cent., that its net income from its Minnesota passenger business yielded a return of only .925 per cent. on the value of its property assignable to that business, and that the net income from all its Minnesota intrastate
574 business was sufficient to yield an income of only 3.359 per cent. on the value of its property assignable thereto. His report is that, if the acts and orders of which complaint is made had been in force during the fiscal year 1907, the year to which the proof is especially addressed in the case of the Minneapolis & St. Louis Company, the net income derived from that company's Minnesota intrastate business would have been sufficient to pay an annual return of only 2.93 per cent. on the value of its property assignable to that business, that the net income derived from its Minnesota passenger business would have yielded an annual income of only 1.79 per cent. on the value of its property assignable to that business, and that its Minnesota net income from intrastate freight and passenger business would have been sufficient to earn an annual return of only 2.47 per cent. on the value of its property assignable to all its Minnesota intrastate business.

All the Minnesota property of each of these companies devoted to transportation had always been and is used at the same time to conduct both intrastate commerce and interstate commerce. In determining whether or not the fares and rates challenged are confiscatory, the Minnesota intrastate commerce of these companies must be considered by itself. That commerce may receive the benefit of none of the revenue and must bear the burden of none of the cost of interstate commerce. The portion of the value of all Minnesota property of each of these companies which is chargeable with the economic duty to produce a just return by means of the intrastate commerce of that company must therefore first be ascertained, for that is the basic measure of the reasonableness of the return produced by the Minnesota fares and rates and the criterion for the trial of the issue confiscation vel non. In the ascertainment of the necessary facts and in the determination of this issue the master pursued this approved method in the case of each company. Take the Northern Pacific Company for example. He first found the real value of that portion of its Minnesota property devoted to transportation in Minnesota during the year ending June 30, 1908, to be $90,204,545, he apportioned this value between its freight business and its passenger business in that state that was conducted by the use of the property thus valued on the gross earnings basis,

and in that way found $66,445,570 thereof assignable to its freight business and $23,758,975 assignable to its passenger business. On the same basis he divided the values thus respectively assigned to freight business and passenger business between the interstate business and the intrastate business of the company conducted by the use of the property so valued, and in that way apportioned $10,867,537 thereof to the company's intrastate freight business, and $8,159,782 thereof to its intrastate passenger business. From the evidence produced he found that the total freight revenue earned by the use, during the year ending June 30, 1908, of the company's Minnesota property valued, was $9,823,508.35, and that the total passenger revenue was $3,512,538.52. These earnings he divided between intrastate commerce and interstate commerce and found that the intrastate freight earnings were $1,606,771.26, and the intrastate passenger earnings were $1,206,333.09. He found
from the evidence that the cost of the freight business con-
575 ducted by the use of the property valued was $5,348,718.25,
and the cost of the passenger business was $2,311,631.95. He divided the freight and passenger cost respectively between the interstate commerce and the intrastate commerce and found that the cost of the intrastate freight business was $1,355,273.82, and the cost of the intrastate passenger business was $863,325. He deducted the annual intrastate freight cost from the annual intrastate freight earnings, and thus found the annual net intrastate freight income, which, divided by the value assigned to the intrastate freight business, produced the 1.941 per cent. which he found to be the annual return which the rates challenged yielded upon the value of the Minnesota property of the Northern Pacific Company used to conduct it. In the same way the annual return upon the value assigned to the intrastate passenger business of this company was found, and the same method was pursued in ascertaining the returns yielded to each of the companies by the assailed fares and rates. His findings upon all these matters are terse, clear, and complete. They set forth the values found, the values assigned, the gross earnings, the net earnings, the cost found, the cost assigned, and where they are not drawn directly from the testimony of witnesses they carefully detail the methods and the computations by which they were reached. These findings are drawn from evidence which the master has reported to the court and which fills 19 printed volumes. Exceptions to them and to the report have been taken, and counsel for the defendants by brief and argument seem to have presented every contention and suggestion in opposition to them that learning, ingenuity, and ability enable man to conceive.

Fortunately it is unnecessary to enter upon any review of the authorities, or any discussion of the rules of law, by which the validity, under the fourteenth amendment to the Constitution of the United States, of the acts and orders which prescribed the fares and rates in question must be tried. They are presumed to be reasonable and valid because the Legislature and the Commission have the power to prescribe fares and rates of this nature on condition that they do not have the effect to deprive the owners of any property whose use is

subjected to them, and the legal presumption is that the officers of the state have faithfully discharged their duties and acted within the constitutional limits of their power. Proof that they have not done so or that their acts and orders are violative of the federal Constitution must be clear.

It is, however, beyond the power of a state or of its officers to establish or maintain fares and rates the effect of the enforcement of which is equivalent to the taking of the property of public service corporations for public use without compensation, unless justice to the public requires such a confiscation. Fares and rates must be just, both to the people and to the carrier. In the case in hand justice to the people does not demand that the property of the defendant companies shall be taken for their benefit without just compensation, and fares and rates which do not yield a reasonable return upon the real value of the property of the railroad companies subjected to them are confiscatory in their nature, and the acts and orders which establish or maintain them are unconstitutional
576 and void. "What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public." Smyth v. Ames, 169 U. S. 466, 547, 18 Sup. Ct. 418, 42 L. Ed. 819; San Diego Land Co. v. National City, 174 U. S. 739, 757, 19 Sup. Ct. 804, 43 L. Ed. 1154; San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442, 23 Sup. Ct. 571, 47 L. Ed. 892; Willcox v. Consolidated Gas Co., 212 U. S. 19, 41, 29 Sup. Ct. 192, 53 L. Ed. 382; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 495.

Numerous exceptions are leveled at the master's findings of the values of the Minnesota properties of the companies used to conduct their intrastate transportation on the ground that they are too high. Speaking generally the same classes of evidence were introduced by the respective parties in the case of each of the companies and what will be said of the proof and the finding in the case of the Northern Pacific Company is applicable to the proof and the finding in the cases of the two other companies. Evidence of the cost of reproduction of the Minnesota property of each of the companies, of the original cost of acquisition and construction thereof, and of the average market value of the stocks and bonds of each of the companies for a reasonable period of time prior to June 30, 1908, was introduced before and considered by the master. He found the value of the Minnesota property of the Northern Pacific Company devoted to public use to be $90,204,545. He found the average market value of the stocks and bonds of the company for a period of five years was $509,824,723. The track mileage of the company in Minnesota was 21 per cent. of the track mileage of the Northern Pacific system, and hence the value of the Minnesota property of the company upon this basis was $107,630,191, nearly $17,000,000 more than the value found by the master. In the absence of competent evidence segregating the property of a railroad company devoted to transportation from its other property, all its property represented by the market value of its stocks and bonds is presumed to be devoted to public use.

Atchison, Topeka & Santa Fé Ry. Co. v. Sullivan, 173 Fed. 456, 466, 97 C. C. A. 1, and the cases there cited. There was evidence in this case, however, that a considerable portion of the property of the Northern Pacific Company represented by the value of its stocks and bonds was not devoted to transportation; but there was no reliable evidence of the value of this property or of its relative value to the value of all the property of the company. For this reason the master rightly and unavoidably concluded that the market value of the stocks and bonds was not a sound premise from which to deduce the value of the Minnesota property of the company devoted to public use. Counsel for the defendants assail this conclusion and found an argument for a lower valuation upon this market value of the stocks and bonds and a statement in a monthly balance sheet of the company which they introduced in evidence and which contained a statement of certain accounts of the company and of the book value of certain securities that appear from that statement not to be devoted to public use and to be held by the company. But this balance sheet was not an admission of the company against interest, the record con-
577 tains no competent evidence of the value of these securities or of the accounts, and therefore the contention of counsel here is without foundation. For similar reasons the market values of the stocks and bonds of the other two companies present no credible evidence that the values found by the master were excessive.

The master found the original cost of the acquisition and construction of the entire railroad systems of each of the companies and the proportion thereof assignable on a track mileage basis to Minnesota. The amounts thus found prove to be much less than the values ultimately found by the master, and for this very good reason: These railroads were pioneers; they were built in large part over the prairies of Minnesota before they were settled and before many of the existing towns, villages, and cities along their lines came into existence. A large part of the right of way of the Northern Pacific Company was granted to it by the nation. The cost of rights of way from 5 to 40 years ago through wild lands, and through towns and villages whose population and the value of the property in which have since been multiplied by from 2 to 10, is obviously no criterion of the value of those rights of way in 1908, when they were used under these fares and rates and when agricultural lands in Minnesota were worth from $35 to $100 an acre, and rights of way and lands for yards and sites for stations in cities like St. Paul and Duluth have wonderfully increased in value. It is a fair return upon the reasonable value of their Minnesota property in 1908 to which these companies were entitled, and the cost of that property at times varying from 5 to 40 years ago may be some evidence; but it is certainly no criterion of its value in that year. In view of these facts the master rightly decided that the cost of reproducing this property new was a more rational and reliable measure of its real value than the original cost of its acquisition and construction or the market values of the stocks and bonds of the companies, and upon that basis he made his findings.

The Railroad Commission seems to have reached the same conclusion at an earlier date, for in the first part of the year 1906, before

these suits were commenced, they had employed Mr. Dwight C. Morgan as their engineer, and had instructed him and had requested the railroad companies to find the respective values of their railway properties in Minnesota on the basis of the cost of their reproduction new. This basis is described in the instructions of the Commission to the companies under date of March 12, 1906, in these words:

"In estimating the value of the physical, real and personal property of the railway companies in the state of Minnesota, an estimate of the cost of reproducing them new is deemed essential as the prime factor. In respect to real estate and construction, this prime estimate is to be made as though the existing railways were not constructed and the regions through which they now extend were occupied as now, by the settlements, improvements, and varied industries. * * * The present value of the physical properties of the railways will be obtained by deducting from the cost of reproduction of deteriorations by time and use, on the date corresponding to that of the estimated cost of reproduction."

A schedule of about 40 items originally suggested by the Commission, and perhaps subsequently somewhat modified was used
578 by both parties in these cases, and their evidence was directed to the values of these items on the basis of the cost of their reproduction new.

The first and largest item on the schedule was "lands for right of way, yards and terminals." In the case of the Northern Pacific Company the evidence on behalf of the complainant tended to show that the cost of reproducing this item was about $25,000,000. The claim of counsel for the Commission now is that the value of this item does not exceed $9,498,099.27, and the master found that the cost of its reproduction and its value were $21,240,562. In the testimony the item is divided into lands for rights of way, yards, and terminals in St. Paul, Minneapolis, and Duluth, which for brevity will be called "terminals," and other lands for rights of way, yards, and sites for stations through the other cities, towns, and villages and through the country, which will be termed "lands outside of terminals." The evidence for the defendants regarding this item consists of an estimate made and verified by Mr. Morgan and corroborating purchases and sales. Mr. Morgan had never bought and sold any real estate, except his homestead, nor was he acquainted with the value of real estate in general. To ascertain the value of the terminals in each of the three cities he took from the county records the considerations recited in the records of deeds of a large number of lots and lands in each of the cities, compared them with the assessed values of those lots and lands, and found the per cent. that on the average the assessed values were of the considerations recited in these records. In St. Paul this was about 60 per cent. He then laid out strips of lands of varying widths along each side of the railway lands he desired to value, divided these strips into such sections as he thought were of about uniform value, found the values of the land in these sections from their assessed values on the theory that the assessed values were, in St. Paul, 60 per cent. of their real values. From these values of the sections of his strips he deduced the values of the railway lands be-

tween the strips by a comparison of areas. To the values of the railway lands thus ascertained he added 75 per cent. because in his opinion it costs railroad companies 75 per cent. more than the normal market value of lots and lands in these three cities to obtain such irregular tracts as they need and now own. To ascertain the value of the lands outside of terminals, he searched out himself and by means of employés the prices at which many lots and lands throughout the region traversed by the railroads had been sold, and from these prices he estimated the value of the lands of the railway companies, and then multiplied these values by three, because, as he testified, it costs railway companies three times the normal value of lands to procure the irregular tracts necessary for their rights of way and station grounds through agricultural lands and the smaller towns, cities, and villages. By these means Mr. Morgan found and testified that the cost of reproduction, and hence the present value of the land for right of way, yards, and terminals, of the Northern Pacific Company, was $15,385,078.47. At the request of counsel for the defendants he made another estimate in which he omitted to use the multiples 75 per cent. of the normal terminal values and three times the normal values of lands outside the terminals,
579 and disclosed therein the fact that if these multiples were not used his estimate would become $9,498,099.27, the value for which counsel for the defendants argue. But neither Mr. Morgan nor any other witness came to say that the latter was the true cost of reproduction or the real value of this item of the schedule. The defendants also introduced evidence of purchases and sales that tend to sustain Mr. Morgan's estimate of the value of this item.

On the other hand, the evidence for the complainants was, as to the terminals in the three cities, the testimony of three residents of each of those cities engaged in the real estate business, of long experience and accurate knowledge of the values of real estate in their respective cities, as to the values of the terminals of each of these companies, the testimony in the Northern Pacific Case of Mr. Cooper, the land commissioner of that company, who was in charge of its rights of way and had purchased for it since 1903 property for which there had been paid $6,139,542.35, and who had a general knowledge of the property in question and its value, the testimony in the cases of the other companies of officers thereof similarly qualified, and evidence of purchases and sales which tend to sustain the evidence of these witnesses. As to the lands outside of the terminals, the Northern Pacific Company produced the testimony of Mr. Cooper and proof of purchases and sales for railway purposes which tend to prove that his testimony of the cost of reproduction and the value of the property was not substantially above prices that had actually been paid for like property. He testified that he had much knowledge from his experience and observation of the cost and value of these lands outside the terminals, that he verified his knowledge by investigating the purchases and sales of property in the vicinities of these various rights of way, that the necessary cost of obtaining such rights of way by a railroad company was three times as much as the normal value of the land, and that his testimony of the value of these tracts was based upon that fact. The evidence in the other two

cases was of the same character. In each of the three cases the master added to the values of the terminals in St. Paul and Minneapolis, established by the testimony of the real estate dealers and Mr. Cooper, 5 per cent. for the cost of acquisition and consequential damages and to the values of the lands for terminals in Duluth, verified by the witnesses for the companies, 25 per cent. for railroad value and the cost of acquisition and consequential damages, and from the values of lands outside terminals, established by the evidence for the companies, he deducted 25 per cent. The result was that his ultimate finding of the value of the first item on the schedule was about $4,000,000 below the value which the testimony of all the witnesses, except Mr. Morgan, sustained, about $6,000,000 above that which Mr. Morgan's testimony supports, and about $11,000,000 above the amount which counsel for the defendant now urge the court to adopt. This finding of the master is assailed because he allowed 5 per cent. of the value of the terminals for cost of acquisition and consequential damages, because he increased the values of the terminals at Duluth, established by the testimony of the real estate dealers, 20 per cent. for the reason that they
580 failed to give due weight to the value of these terminals for railway purposes, because the companies' estimates of the value of this item included an addition to the values of the St. Paul and Minneapolis terminals fixed by the real estate dealers of 25 per cent. thereof for railroad value, and because he failed to follow the theory of Mr. Morgan and to adopt the value which Mr. Morgan would have found if he had discarded his multiples.

But the evidence in this case is conclusive, nay, we may say it is without conflict, that every railroad company is compelled to pay more than the normal market value of property in sales between private parties for the irregular tracts it needs and acquires for rights of way, yards, and station grounds. The defendants' witness, Mr. Morgan, testified that in his opinion the companies necessarily paid three times the normal value for the lands outside of the terminals in the three cities and 75 per cent. more than the normal value for their terminals within those cities. The master in effect found that the cost of reproduction and the present value of the lands for the terminals in the three great cities, including therein all cost of acquisition, consequential damages, and value for railroad use which he allowed, was only about 30 per cent. more than the normal value of the lands in sales between private parties. He found the value of the lands outside the terminals to be only twice their normal value. Findings of lower values would have been contrary to the great weight of the evidence and without substantial support therein.

The measure of the value of real estate is its market value for its most available use. There was uncontradicted evidence that the most available use of the terminal lands in Duluth, the use for which they were of the greatest value, was their use for railroad purposes, that they were indispensable for those purposes, that the real estate dealers who testified to their values had fixed them originally in 1906, without regard to their value for railroad uses, and that since that time they had advanced in value from 15 to 25 per cent. Thus the proof is ample to sustain the addition to this 1906 estimate of the

value of these lands of 25 per cent. thereof for railroad value, cost of acquisition, and consequential damages which the master allowed.

But counsel argue that this court should disregard Mr. Morgan's multiples and fix the value of this entire item at the amount that his estimate would produce if his multiples were not used, $9,498,099.27, because the original presumption was that the fares and rates fixed by the Legislature and the commission were just and reasonable, clear proof was requisite to overcome that presumption, if there is any substantial evidence to the contrary the proof is not clear, and the master's findings must be presumed to be wrong, and Mr. Morgan's evidence is sufficient to enable one fairly, in the exercise of an honest judgment, to disregard the findings of the master and the evidence which supports it, and to adopt the lowest value claimed. This contention is urged with such force and frequent repetition in brief and argument, and is applied so persistently to the various specific findings of the master, that it deserves consideration.

Rate making, the determination of what shall be the railroad rates in the future, is a legislative function. But rate judging, the determination whether rates already made yield a fair return upon
581 the reasonable value of the property used to earn them, or take that property without just compensation in violation of the Constitution, is a judicial function. Prentis v. Atlantic Coast Line, 211 U. S. 210, 226, 228, 29 Sup. Ct. 67, 53 L. Ed. 150; Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission (C. C.) 164 Fed. 645, 648. Why should the presumption that the judicial officer, on whom the duty to perform the latter function is imposed by the law, rightly discharges that duty and reaches just conclusions, be less persuasive than the presumption that legislative officers faithfully discharge theirs? When a rate is made under legislative authority, the legal presumption is that it is fair and reasonable, and proof to the contrary must be clear, especially in cases in which the rates challenged have never been in operation and injunctions are sought while their effect is yet speculative.

But the question whether fares and rates which have been put in operation confiscate the property of the companies in violation of the Constitution of the United States is a judicial, and not a legislative, question. And when that issue is presented the rules of law, of equity, and of practice applicable to the determination of judicial questions have effect. When, therefore, rates have been tried by actual use for many months, and their effect has become known and is proved, when the issue whether or not they take the property of the railroad company without just compensation has been made in a competent court, and all parties have introduced, in the presence, and subject to the cross-examination and rebuttal, of each other, all the evidence they desire, when that issue and the numerous subordinate issues it involves have been heard and decided, as they have been in the case in hand, by a master, who has personally heard the testimony of every witness, received and examined all the evidence, and made specific findings of every material issue of fact in the case, the judicial presumption arises that his findings are right. This is a presumption of reason as well as of law, a presumption that forces

itself upon and compels the reflective mind. Take the general issue. The Legislature and the Commission decided it upon the information they had acquired as to the probable effect of the rates they were making before those rates were tried. The master decided it after the fares and all the rates, except the commodity rates, had been tried for many months and their actual effect was known and proved. The former decision was based on the conjectural effect of the rates; the latter, on their actual effect. The master decided this issue upon a full trial, in which all parties produced all their evidence, subject to the cross-examination and rebuttal of each of the other parties, in the manner which the wisdom and experience of centuries has taught is most conductive to the discovery of the truth and the administration of justice. The Legislature and the Commission decided it without such trial or such proof.

Doubtless, if the fares and rates had been tested by the actual operation of the railroads under them, and the plenary proof of their effect and of the other facts presented to the master had been introduced before the Legislature and the Commission, they would have reached the same conclusions which the evidence forced upon the master's mind. They decided the issue upon evidence
582 more conjectural or speculative; he, upon proof more certain and conclusive. And the presumption that a master learned in the law, accustomed by long experience at the bar and on the bench to hear and analyze evidence and draw just conclusions therefrom, has faithfully discharged his judicial duty and reached right results, is not less strong than the presumption that the Legislature and the Commission rightly discharged their official duties. The result is that when, after fares and rates have been in effect for months, plenary proof of that effect and of other facts pertinent to the issue of confiscation vel non is made before a master who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that they were just and reasonable, which arose before they were or could be tried, and it prevails over it. The question, therefore, upon the exceptions to the master's report, is not, is there any evidence upon which one might fairly, in the exercise of an honest judgment, reverse his findings? But it is, are the findings which are presumptively right sustained by clear proof? If they are, they should be affirmed, and the exceptions to them should be overruled.

Returning now to the finding of the value of the first item of the schedule, it is sustained by the testimony of nine real estate dealers familiar with the values of the properties in their respective cities, by the testimony of the officers of the companies who were well acquainted with the properties and their values, who had purchased rights of way that cost many millions of dollars, and by the corroborative evidence of purchases and sales at prices approximating the values found. It is met by the theoretic value of Mr. Morgan, based on his assessment sales method of proof, and by evidence of purchases and sales corroborating it. But the foundation of this value is what copying clerks wrote that grantors in deeds wrote were the

considerations of their conveyances of certain properties, and all of these parties were strangers to the parties to this suit. It is conditioned by Mr. Morgan's opinion of the number of such considerations it was necessary to use to discover the true relation of considerations of deeds or presumptive values of properties described therein to their assessment values, by his opinion as to the width of the strips on each side of the rights of way and as to the number and the lengths of the sections of the strips requisite to ascertain just measures of the values of the rights of way between them. He concedes, and counsel for the defendants do not deny, that his method would not reliably indicate the value of any specific lot or tract of land of moderate dimensions, and it is difficult to understand how it can escape the maxim, "falsus in uno, falsus in omnibus." A careful consideration and analysis of Mr. Morgan's testimony and of the other evidence introduced to support it has convinced that they are too indirect, uncertain, and inconsequential to overcome the direct and convincing proof of the values of these properties which the complainants have made, and the exceptions to the master's findings of these values must be overruled.

Exceptions were taken to the allowance of interest at 4 per cent. per annum on the cost of the reproduction of the railroad properties during one-half of the estimated times of their construction. But the evidence is conclusive that moneys invested for the pur-
583 chase of rights of way for, and in the construction of, railroads, ordinarily produce no net income during the period of construction, that the amount of capital thus losing returns is ordinarily equal to one-half of the cost of reproduction during the entire period of construction, or to the entire cost during one-half of that period. There is no doubt that interest at a fair rate on the capital invested in materials and labor that remain idle during construction is as much a part of the cost of constructing or reproducing a railroad as is the money paid for those materials or that labor. Brunswick Water District v. Maine Water Company, 99 Me. 371, 59 Atl. 537, 542. Mr. Morgan, the engineer and witness for the defendants, allowed in his report to the Commission, and verifies the justice of an allowance, of 4 per cent. per annum during one-half of the period of construction; but the amounts he allowed were less than those found by the master, because his estimates of the cost of reproduction and of the times requisite for construction were less. The weight of the testimony on this subject, however, sustains larger amounts than those fixed by Mr. Morgan or the master, and there was no error against the defendants in the latter's finding and allowance of the item here under consideration in either of the cases in hand.

The Minnesota Transfer Railway Company is a corporation and the joint agent of the owners of ten different lines of railway for the interchange of their freight traffic in St. Paul and Minneapolis. Each of the ten owners owns one-tenth of the property of the Transfer Company by virtue of an ownership of stock. The St. Paul Union Depot Company is a like corporation and joint agent of the owners of nine lines of railroad for the exchange of their

passenger traffic, and it is owned by nine constituents in the same way. Each of the three defendant companies owns one share in each of these terminal companies, and the latter corporations and their properties are operated and used as tools of the railroad companies that own them, to conduct transportation for their exclusive use and benefit. The defendants complain because the master allowed to each of these three companies $1,186,191 as the cost of reproduction and the value of their respective interests in the property of these subsidiary companies, and because he allowed to the Northern Pacific Company $1,180,151 for the cost of reproducing and the value of its interest in a similar corporation and its property used by the Northern Pacific Company for a like purpose at Duluth. It is not claimed that these interests are not worth, or that their cost of reproduction would not be, the amounts allowed; but it is contended that these values are not allowable at all, because they are represented by the stocks and bonds of the subsidiary companies. But these interests in these terminal corporations and their property are the most indispensable parts of the Minnesota properties of the defendant companies used to earn the fares and rates here in question, and any estimate of the value or of the cost of reproduction thereof which omitted the value or the cost of reproduction of these interests would have been incomplete and deceptive. The master rightly considered and allowed their value.

There are exceptions because the master allowed to the Northern Pacific Company $1,613,612.76, to the Great Northern Com-
584 pany, $3,219,642, and to the Minneapolis & St. Louis Railroad Company $608,896.43, for the solidification and adaptation of their respective railroads, and deducted nothing from the cost of reproduction for depreciation. But these amounts are those allowed by the defendants' engineer and witness Morgan in his original estimates of the cost of reproduction which he reported to the Commission, and there is much other evidence in the record to sustain them. It is clear that a new railroad may appreciate or depreciate as it grows older. It may be renewed, repaired, and improved day by day and year by year as it is operated, until its embankments become more solid, its culverts and bridges firmer and more reliable, its ties and rails more steadfast and secure, and its rolling stock more seasoned and better adapted to its service and to the railroad it traverses, and until the whole property becomes more valuable than it was when it was first constructed. On the other hand, its embankments and its roadbed may be neglected and permitted to deteriorate by the action of rain, snow, and frost, its ties may be allowed to become partially decayed, its bolts and rails loose, and its rolling stock worn, without adequate repairs, until the entire property suffers great depreciation. Whether at a given time a railroad property is more or less valuable than it would be if it had just been constructed is a question of fact, that in a suit of this nature must be answered by the evidence. That evidence in this case is that the railroads, rolling stock, and appurtenances which constitute the great transportation machines of these companies in Minnesota are in better condition for use, more efficient, more stead-

fast, better adapted to each other, than if their construction was just completed, that all depreciation has been offset by appreciation, and that values to the amounts here allowed by the master have been added to the values of these properties new, by their age, their repairs, their renewals, their adaptation, and the assured efficiency that comes from constant careful maintenance and operation. There was no error in these allowances.

Many other exceptions were taken to items which constitute parts of the values found by the master. Each one of them has been examined in the light of the evidence, the arguments, and the briefs. They challenge matters less important than those that have been reviewed, and no good purpose would be served by stating and discussing them in detail. Suffice it to say that none of these exceptions is sustained by the record, and the result is that the findings of the values of the Minnesota properties of the three companies by the master must be confirmed.

The master divided the values of the Minnesota properties between freight business and passenger business and between interstate business and intrastate business on the basis of the respective gross earnings of these classes of business. Counsel for the defendants challenge this basis of division, and contend that the apportionment should have been made on the basis of the use made of the property by each of these classes of business, measured either (1) by the aggregate number of the ton miles and passenger miles of the respective classes, or (2) by the aggregate number of the car miles and engine miles of these classes. They say that if that
585 proportion of the value of the property of a company which the number of ton miles hauled by it in Minnesota bears to the aggregate of its ton miles and passenger miles in Minnesota be assigned to its freight business, and that proportion which its number of passenger miles bears to the same aggregate be assigned to the passenger business, and if that proportion of the value thus assigned to the freight business which the aggregate of the car miles and engine miles appertaining to the intrastate freight business bears to the car miles and engine miles used in the freight business be assigned to the intrastate freight business, and the same method be pursued in apportioning value to the intrastate passenger business the apportionment will be more equitable and just. The issue is between apportionment by use without regard to the worth or value of the use and apportionment according to the value of the use. The latter basis seems to be more logical and rational. Capitalization is founded on the worth of use, not on mere use. The value of property and of investment in every form is measured by the value of its use, not by its use divorced from the value thereof. The Minnesota Railroad Commission, the railroad companies, all rate makers, base their rates primarily on the worth of the use of the railroad machines by the various classes of freight and by the passengers, and not on the amount of that use. The rate for hauling a ton of merchandise of the first class a mile is not five times the rate for hauling a ton of merchandise of class E a mile, because the former ton mile uses the railroad property five times as much as the

later, but because the use by the former is worth more than the use by the latter. Moreover, there is no unit of measurement of ton miles and passenger miles, of freight car miles and freight engine miles, or of passenger car miles and passenger engine miles, divorced from the values of the uses they make of the railroad property, from the classes of loads they carry and the distances these loads are hauled. Indeed, there is no proportioning or measuring relation between such varying uses of property, when no regard is given to the values of these uses.

On the other hand, the values of the uses, the earnings of the property, unavoidably condition the value of the property used, and present a natural and equitable basis of apportioning that value to these uses. Cases may indeed be imagined in which this basis does not produce persuasive results. One of them was suggested by Mr. Justice Brewer in Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins, 176 U. S. 167, 176, 20 Sup. Ct. 336, 44 L. Ed. 417, and others of like character have been presented in argument by counsel. But no basis has been suggested and none has been discovered which seems to be more equitable or more accurate. It may be that there is no basis or method that brings perfect or ideal results. But because the ton mile and passenger mile basis has no common unit of measurement, because that basis and the car mile and engine mile and the passenger car mile and passenger engine mile bases exclude the effect of the values of the uses made of the railroad property by the various classes of freight and by the passengers carried, because there is really no proportioning relation between uses divorced from their values and the value of the property used, because these bases ignore the differences in the classes of freight carried and in
586 the distances they are hauled, because the apportionment of the value of railroad property on the basis of the gross earnings of the classes of business, which disclose approximately the values of their uses of it, gives effect to these material differences, appeals more persuasively to the reason and produces results more equitable than any other basis suggested and because this basis has commended itself to the judgment of, and has been adopted by, the courts upon whom duties of apportionment of this nature have been imposed in like cases, the master was justified in following their decisions and his action and report in this regard is confirmed. Ames v. Union Pacific R. R. Co. (C. C.) 64 Fed. 165, 179; Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins (C. C.) 90 Fed. 363, 370; St. Louis & S. F. Ry. Co. v. Hadley (C. C.) 168 Fed. 317, 348-352; Northern Pacific Ry. Co. v. Keyes (C. C.) 91 Fed. 47, 56, 57; In re Arkansas Railroad Rates (C. C.) 163 Fed. 141, 142; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 497.

In the cases of the Northern Pacific Company and the Great Northern Company exceptions are urged to the master's division of common cost between freight business and passenger business, to his finding that the cost of doing intrastate freight business was 2½ times the cost of doing interstate freight business, and to his finding that the cost of doing intrastate passenger business was 15

per cent. more than the cost of doing interstate passenger business. About 60 per cent. of the cost of doing the passenger and freight business in Minnesota consisted of items which in themselves disclosed the fact that they were incurred either in doing the passenger or in doing the freight business. All parties conceded that these items were properly assigned to the freight business and the passenger business, respectively, by the railroad companies, and these are termed "allocated items." The remaining 40 per cent. of the cost consisted of items incurred for the common benefit of the passenger business and the freight business, and there was no method of assigning these items that was certain to be mathematically and absolutely correct. Two methods were advocated by the respective parties to this controversy. The defendants introduced in evidence an allocation of these items made by Mr. Conway W. Hillman, an expert railway accountant, without extended experience as a railroad operator, whereby, in the Northern Pacific case, about $400,000 more common cost, and in the Great Northern case, about $900,000 more common cost, was assigned to the passenger business, and a correspondingly less amount to the freight business, than was assigned by the companies and confirmed by the master. This division was supported by the testimony of Mr. Hillman that in his opinion it was right and reasonable and by his statement of his reasons for this belief. But no other witness came to support his view. On the other hand, a large number of witnesses, who had long been familiar with the details of the expense of operating railroads, who had enjoyed a long experience in their actual operation, and who had considered in the light of their knowledge and experience and formed opinions concerning a just division of this common cost, testified that the allocation made by the companies and finally adopted by the master was fair and just. This testimony was buttressed by evidence that this basis of division
587 had been used by these and other railroad companies for their own information and convenience for some time before the questions here at issue had arisen, and that it had at one time received the approval of the Interstate Commerce Commission. So it is that whether the knowledge, experience, and opportunities of the witnesses to form correct judgments upon this issue or their numbers be considered, the great preponderance of the evidence sustains the division made by the master, and it must stand.

All admit that the cost of doing intrastate business exceeds the cost of doing interstate business, and the issue is, how much does the cost of doing the former exceed the cost of doing the latter? Upon that issue many hundreds of printed pages, a mass of evidence too vast for recital or review, has been examined and considered by the master and the court. The evidence for the state consists of the testimony of Mr. Hillman, and the evidence for the complainants is the testimony of six men who have long been engaged in and are familiar with the actual operation of railroads and the expenses thereof. Many criticisms of the testimony of each of these witnesses, of their opinions, and of the reasons they

give for them, have been made by counsel for the respective parties, and have been the subjects of study and reflection in the light of the evidence and the arguments. Mr. Hillman's conclusion in the Northern Pacific case, and it was similar in the other cases, was that the cost per ton per mile of doing intrastate business was about 44 per cent. more than the cost of doing interstate business. Starting with the cost of doing business which was entirely local upon certain branch lines of the company, a cost which he extracted from its records, and with the assumption that the cost per ton per mile of doing the local business on the main lines of the company was the same as it was on the branch lines, he derived this result from these premises, from other records and reports of the company, and from a long and intricate series of computations, assumptions, and deductions. No chain, however, is stronger than its weakest link, and an examination of the method he pursued and the bases upon which he founded his conclusion has convinced that the result he deduced is conditioned by so many of his own opinions and assumptions, unsupported by other persuasive proof, that his conclusion is entitled to no more weight than his opinion that it and the means by which he reached it are correct.

Many witnesses, however, whose evidence disclosed the facts that they had long been engaged in the actual operation of railroads, that they had learned and knew from actual observation and experience the conditions which increased and diminished the cost of the transportation of freight, and the relative effect of these conditions upon the cost of interstate and intrastate transportation, that they were familiar with the details of the relative expenses of doing intrastate and interstate freight business, witnesses whose opinions are certainly as likely to be sound as that of Mr. Hillman, came and testified that, while they had no means of accurately and mathematically determining the fact, they were confident in the opinion that the cost per ton per mile of doing intrastate freight business was from three to six times the cost per ton per mile of doing interstate business. Counsel for the defendants say that a portion
588 of local business is interstate business and takes a short haul, and a portion of through business is intrastate business and takes a long haul, and that the effect of the testimony of these witnesses is not that the cost per ton per mile of intrastate freight business is from three to six times the cost of interstate freight business, but merely that the cost of local and short-haul business bears that relation to the cost of through and long-haul business. The testimony of these witnesses has been considered in view of this criticism, but the record does not seem to sustain the contention of counsel. For example, Mr. Elliott says that the average haul of intrastate freight in Minnesota on the Northern Pacific Railroad was about 104 miles, that the average haul of interstate freight touching Minnesota on that railroad was about 485 miles, that the expense of short hauls is much greater than that of long hauls, and after enumerating various other reasons he testified that these reasons "all lead me to the conclusion that the so-called short-haul intrastate business costs anywhere from three to six or seven

times as much as the so-called long-haul, through interstate business." On his redirect examination he was asked if by the statement which has just been quoted he meant "to compare the average cost of the state business with the average cost of the interstate business," and his answer was, "That was my intention in making that statement in my direct examination last week." Mr. Doddridge testified in the Great Northern case that his judgment was that upon the basis of ten miles, excluding the Missabe ore traffic, the ratio of extra cost per ton per mile of intrastate Minnesota freight was at least three times, and maybe four times, as great as that of interstate freight. True, much was said in the testimony of these and other witnesses of the extra cost of short hauls over long hauls, and of local business over through business, for the witnesses had in mind that a larger proportion of the interstate freight than of the intrastate freight was through business and took the long hauls; hence the terms "local freight" and "local business" appear to have been frequently used in this case and in other cases of this character to mean intrastate freight and intrastate business. But, when all the testimony of each of the six witnesses for the complainants upon this issue is considered together, it is persuasive that their testimony clearly discloses their opinions that the cost per ton per mile of the intrastate freight business of the two companies in Minnesota was from three to six times the cost of their interstate freight business in that state. The testimony of Mr. Hillman on behalf of the defendants falls far short of prevailing over this evidence, and the exceptions to the finding of the master that the cost of the Minnesota intrastate freight business of the companies per ton per mile was at least 2½ times that of the interstate freight business must be overruled. For similar reasons the master's finding that the cost of intrastate passenger business per passenger mile was 15 per cent. more than that of interstate passenger business is confirmed. Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 499; In re Arkansas R. R. Rates (C. C.) 163 Fed. 141, 143; Chicago, Mil. & St. P. Ry. Co. v. Tompkins, 176 U. S. 167, 20 Sup. Ct. 336, 44 L. Ed. 417; Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 262, 22 Sup. Ct. 900, 46 L. Ed. 1151; Ames v.
589 Union Pacific R. R. Co. (C. C.) 64 Fed. 165, 184; Northern Pac. R. R. Co. v. Keyes (C. C.) 91 Fed. 47, 54; St. Louis & S. F. R. R. Co. v. Hadley (C. C.) 168 Fed. 317, 348. The master did not rest his final conclusions on this relatively greater cost of intrastate business per ton per mile without a careful consideration and credit to the intrastate business of the relatively greater revenue per ton per mile derived from that business, thus reducing the percentage for the freight business in the Northern Pacific case, for instance, from 250 per cent to 173+ per cent., and for passenger business from 115 per cent. to 113+ per cent.

Complaint is made that the master finds that the companies are entitled to a net return of 7 per cent. per annum upon the respective values of their properties devoted to this public use. The character of the business in which an investment is made, the locality in which it is placed, the returns secured in that locality from other investments of a similar nature, the uniformity and

certainty of the return, and the risks to which the principal and the income from it are subjected condition the measure of a fair return upon capital invested. An investment in a bank, in a factory, in a mercantile, manufacturing, or agricultural business, is substantially free from regulation by the government and exempt from any duty to the public, except that of paying taxes. If the business in which such an investment is made is unprofitable, its owners may promptly discontinue its operation until more prosperous days come and then return to their undertaking. An investment in a railroad which operates in many states is subject to the regulation of its business by many governments. Its owners owe the duty to the governments and to the public to operate their railroad continually in days when its operation is unprofitable as well as when it is remunerative, a duty they must discharge under the penalty of the forfeiture of their property if they fail. In view of these facts, they ought to be permitted to receive a return large enough to enable them to accumulate in prosperous days a surplus sufficient to enable them to protect their property in days of disaster and to make their average return through days of prosperity and of adversity fair and just. The lands in Minnesota through which these railroads extend are fertile and productive. The cities, villages, and towns they reach are rapidly increasing in population and wealth, and the people they serve are thriving and successful. The evidence satisfies that the railroads are maintained in excellent condition, that they are efficiently and on the whole economically managed and operated, and are rendering commendable service. Justice to the thriving people they serve does not require that the owners of these railroad properties should be deprived of a fair return upon their values. To deprive them of such a return would prevent advances and tend to compel reductions in the wages and salaries of their employés, would tend to prevent the extension of their lines into portions of the state where the development and accommodation that railroad service assures would be welcome and may be needed, to deteriorate the character of the service they render, and to retard the general prosperity. The legal rate of interest on a debt in Minnesota, in the absence of contract, is 6 per cent., and by contract it may be 10 per cent.
590 per annum. Rev. Laws Minn. 1905, § 2733. Rational investments in agricultural, manufacturing, mercantile, and other industrial pursuits, and even well-secured loans, yield returns in Minnesota corresponding with these lawful rates. Investments in railroads and the returns thereon are at the risk of failures and partial failures of crops, of the disasters, delays, and expenses of unusual storms, snow, and cold, of the great financial disasters which occasionally prevent or delay the movement of traffic, and of the burden of continuous operation whether profitable or unremunerative. It is an axiom in economics that the greater the risk the greater must the return be upon invested capital, and the conclusion is irresistible that a net return of 7 per cent. per annum upon the respective values of the properties of these companies in Minnesota devoted to transportation is not more than the fair return to which they are entitled under the Constitution of the United States.

Other exceptions were taken by the defendants, but they must be overruled, because they are not of the controlling character of those that have been discussed, and they are not sustained by the record. For the same reasons, the exceptions of the complainants must share a like fate.

The findings of the master must be confirmed. The fares and rates prescribed by the acts of the Legislature and the orders of the Railroad and Warehouse Commission which have been considered, have been, are, and will be, as to each of these railroad companies, unreasonably low, unjust, and confiscatory. Each of those acts and orders is violative of the fourteenth amendment to the Constitution, and void, and a decree for the complainant must be rendered in each of the cases.

It is so ordered.

(Endorsed:) Decision Confirming Master's Report. Filed April 8th, 1911. Louise B. Trott, Clerk.

591 United States Circuit Court, District of Minnesota, Third Division.

In Equity.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

(Consolidated.)

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

Decree.

This cause came on for final hearing on the evidence, the report and findings of the Master and the exceptions thereto, Walter H. Sanborn, Senior Circuit Judge, presiding, and was argued on behalf of the complainants by Mr. Jared How, Mr. Charles W.
592 Bunn, Mr. Hale Holden and Mr. Pierce Butler (Mr. Robert Throne and Mr. William D. Mitchell, were with them on the

briefs), on behalf of the defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist by Mr. Edward T. Young and Mr. Edmund S. Surment (Mr. George T. Simpson was with them on the briefs), and now after consideration,

It is ordered adjudged and decreed:

SECTION 1. That the findings and report of the Master be, and the same are, confirmed and the exceptions thereto are overruled.

SECTION 2. That the acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the bill of complaint, operate as a burden upon and an interference with a regulation of and an unjust discrimination against commerce among the states conducted and carried on, over and upon the lines of railway of the defendant the Great Northern Railway Company, and said acts and orders are and each of them is, confiscatory and constitutes an attempt to deprive the complainants and the said Railway Company of their and its property without due process of law and to deny them and it the equal protection of the law, and to impose upon said railway company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said acts and orders are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés are concerned, and that said
593 Great Northern Railway Company, its officers, directors, agents and employés, be, and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said act of April 4, 1907, or from publishing or adopting the tariffs, rates, or charges set forth and prescribed in said act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said act.

SECTION 3. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said orders of September 6, 1906, and May 3, 1907, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said orders of September 6, 1906, and May 3, 1907.

SECTION 4. That said George T. Simpson, the Attorney General aforesaid be, and he is, hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, *ajent* agents or employés to enforce the penalties and punishments specified in said acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 5. That said defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of said Railway Company,
594 and all others making use of said lines of railway be, and they are, and each of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said acts or orders or any of them.

SECTION 6. That the complainant recover of the defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, — Dollars, the costs of this suit which shall be hereafter taxed and inserted herein and that the complainants have execution therefor.

SECTION 7. This decree shall take effect and be in force on and after the first day of June, A. D. 1911.

WALTER H. SANBORN,
United States Circuit Judge.

Let the foregoing decree be rendered, filed and recorded this April 8th, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

(Endorsed:) Decree. Filed April 8th, 1911. Louise B. Trott, Clerk.

595 Causes 858 and 870 Consolidated. See page 138.

596 Circuit Court of the United States in and for the District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,
against
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Minnesota:

Henry A. James, a citizen of the State of New Jersey and a resident of Lakewood, in said State, brings this, his bill of complaint,

against the Great Northern Railway Company, a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and having its principal office and place of business in the City of St. Paul, in said state, Edward T. Young, a citizen of the State of Minnesota and a resident of the County of Swift therein, Ira B. Mills, Charles F. Staples and William E. Young, who are each of them citizens of the State of Minnesota, and residents respectively of the Counties of Clay, Dakota and Blue Earth, in said state, Walter Scott and H. P. Webb, who are each of them citizens of the State of Minnesota and residents of the County of Pine therein, John Palm, L. Larson, Tom Gunness and S. S. Glarum, who are each of them citizens of the State of Minnesota and residents respectively of the Counties of Meeker, Clay and Kandiyohi
597 therein, the defendants above named, and thereupon your orator complains and avers:

I.

That the defendant, Great Northern Railway Company, is a railroad corporation and common carrier of goods and passengers, engaged in state and interstate commerce, and maintains and operates lines of railway in the State of Minnesota and other states. The main line of said Great Northern Railway extends from the City of Superior, in the State of Wisconsin, and from the Cities of Duluth, St. Paul and Minneapolis, in the State of Minnesota, through the States of Minnesota, North Dakota, South Dakota, Montana, Idaho and Washington, to Seattle on the Pacific coast, including branches and constituent lines in said states. Its system of roads, including its said main line and branches, comprises about 6,200 miles, of which more than 1,902 miles are located wholly within the State of Minnesota. The whole of the said lines of railway so operated by the said Great Northern Railway Company constitute and have constituted one system, and are have been operated and maintained as such. The stock of the said company outstanding represents the entire system. Its cars, engines and appliances are used upon the entire system wherever acquired. It is impossible to segregate its stock and to apportion any part thereof as standing for or representing the said Railway Company or its property in any particular state. It is impossible to operate the said lines of railroad separately in any state, and the trains of the said Railway Company, for the most part, necessarily move through and between different states, the same trains and cars carrying both interstate freight and passengers
598 and also intra-state freight and passengers. The principal business of the said Railway Company consists of interstate commerce, and it is a carrier of such commerce, subject as your Orator is advised and believes, to the sole control and supervision of the United States.

II.

The defendant Edward T. Young is the Attorney-General of the State of Minnesota, and the defendants Ira B. Mills, Charles F. Staples and William E. Young are members of and constitute the

Railroad and Warehouse Commission of the State of Minnesota, duly elected and acting under the General Laws of the said state. The defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum are hereby designated as shippers, each being a person engaged within the State of Minnesota in shipping and receiving freight over the lines of the said Great Northern Railway Company. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all as parties hereto, and those above named are made defendants for the purpose of determining the rights as against the said Railway Company of all shippers under the acts and orders, respectively, hereinafter set forth.

III.

This cause arises under the Constitution and laws of the United States, for that your Orator seeks to enjoin the said defendant, Great Northern Railway Company, from publishing or adopting, or from continuing to observe or keep in force, if the same have been published or adopted, certain rates, tariffs and charges prescribed or set forth in two certain Acts of the Legislature of the State of
599 Minnesota, and two certain orders of the Railroad and Warehouse Commission of the said state, hereinafter specifically described, and to enjoin the other defendants herein, and each of them, from attempting in any manner to enforce the provisions or penalties of the said Acts or orders, or either of them, or from instituting or causing to be instituted any action or proceeding against the said defendant Railway Company, its officers, directors, agents or employees, on account of any violation thereof, for the reason that the said Acts and the said orders, and each of them, and the tariffs, rates, charges, regulations, schedules and classifications, attempted to be promulgated thereby, are each and all of them unconstitutional and void and violative of the provisions of the Constitution of the United States and the amendments thereof, all as hereinafter more particularly set forth.

The matter and amount in dispute in this action exceeds, exclusive of interest and costs, the sum or value of Two thousand Dollars ($2,000.00).

IV.

That the Legislature of the State of Minnesota, at its session in the year 1907, passed an Act which was duly approved on the 4th day of April, 1907, which said Act is entitled: "An Act Prescribing "Maximum Rates to be Charged for the Transportation of Passengers "upon Railroads within the State of Minnesota, Providing for the "Enforcement of the Same and Penalties for the Violation thereof" a copy of which Act is hereunto annexed, marked "Exhibit A," and hereby made a part hereof as though the same were here fully and at large set forth and which Act, by the terms thereof, took effect and became operative on the first day of May, 1907.

600 That at the same session the said Legislature of the State of Minnesota, passed an Act, which was duly approved on the

18th day of April, 1907, which said Act is entitled "An Act Relat-
"ing to Railroad Freight Rates in the State of Minnesota and
"Defining Certain Duties of the Railroad and Warehouse Com-
"mission," a copy of which said Act is hereunto annexed and marked "Exhibit B" and hereby made a part hereof as though the same were here fully and at large set forth, and which Act, by the terms thereof, was to take effect on the first day of June, 1907.

That on the 6th day of September, 1906, the defendants above named, Ira B. Mills, Charles F. Staples and William E. Young, constituting the Railroad and Warehouse Commission of the State of Minnesota, assuming to act under and by virtue of the provisions of the general statutes of the said State, made and published, and thereafter duly served, an order entitled, "In the Matter of the
"Investigation of the Reasonableness of the Merchandise and Com-
"modity Tariffs of Rates and Charges between Stations in the State
"of Minnesota on the Several Lines of Railroad," and thereafter, pursuant to a note appended to the said order of the said Railroad and Warehouse Commission, on the 3rd day of May, 1907, duly made, published and served an order entitled "In the matter of the Com-
"modity Rates to Distributing Centres Hereinafter Named on the
"Lines of the Great Northern Railway Company," copies of which orders are hereto annexed and marked respectively "Exhibit C" and "Exhibit D," and are hereby made a part hereof as though the same were here fully and at large set forth.

V.

601 Your Orator further shows that the said Great Northern Railway Company, its officers, directors, agents and employees, have published and put in force and effect, and now keep and maintain in force and effect, the passenger rates prescribed in said Act of April 4, 1907, and the freight rates mentioned in said orders of the Railroad and Warehouse Commission of September 6, 1906 and May 3, 1907, and intended to and would have put into effect the freight rates mentioned and set forth in said Act of April 18, 1907, when the same became effective under and by virtue of its terms, as therein set forth, but for a restraining order issued out of this Court.

VI.

That the said Act of the Legislature approved April 4, 1907, prescribed that no Railroad Company owning, operating or using a line of railroad within or partly within the State of Minnesota shall charge or collect more than two cents per mile for carrying over its road on any trip wholly within the said state any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred fifty (150) pounds in weight, or more than one cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five pounds (75) in weight.

The said Act approved April 18, 1907, and the said orders of the Railroad and Warehouse Commission dated respectively September 6, 1906, and May 3, 1907, attempt to promulgate and prescribe

certain fixed tariffs, charges and schedules of rates for the transportation of merchandise and commodities on railroads between points within the State of Minnesota.

VII.

602 The conditions attending the transportation of passengers, merchandise and the commodities mentioned in the said Act of April 18, 1907, are the same upon the lines of the defendant Railway Company in the State of Minnesota, and in the States of Wisconsin, North Dakota and South Dakota, which are contiguous thereto, and it is the legal duty of the said Railway Company to serve all the localities above mentioned and all the communities therein without discrimination, and therefore, in view of the legal obligation of the said Railway Company not to discriminate, its practice has always been to make its passenger rates and its tariffs upon merchandise and the said commodities upon a uniform principle or basis, disregarding state lines. Its rates upon passenger transportation, upon merchandise and the said commodities have been the same for similar distances upon local passenger transportation or local shipments, as the case may be, in the States of Wisconsin, Minnesota, North Dakota or South Dakota, and upon interstate shipments between the said states. In view of the conditions described, it is and has been utterly impossible to apply in either of the said states a materially different plan, system or scale of tariffs upon passenger transportation or upon merchandise or upon the said commodities, or a materially lower plan, system or scale of tariffs upon local passenger transportation or upon local shipments of freight in any of the said states than those applied upon interstate shipments and passenger traffic.

The tariffs of said Railway Company upon merchandise prior to September 6, 1906, and May 3, 1907, and affected by said orders of the said Railroad and Warehouse Commission of those dates respectively, and the tariffs of the said Railway Company on commodities, in force prior to April 18, 1907, and affected by the said

603 Act of the Legislature of that date, and the tariffs of the said Railway Company for passenger transportation in force prior to April 4, 1907, and affected by the said Act of that date, and all other tariffs of said Railway Company, were and are relatively reasonable and fair as between themselves, and were and are reasonable and fair as between different states, and the local tariffs in each state were and are reasonable and fair as compared with the interstate tariffs.

Between the distances of 250 miles and 320 miles on the lines of said Railway Company there are many stations in the State of Minnesota, and also in the States of Wisconsin and North and South Dakota, between which there is a similar commerce and passenger traffic under similar conditions, and your Orator is advised that there is no principle upon which the said Railway Company can legally apply to those stations outside of the State of Minnesota a materially higher or different scale of rates and charges than it applies to stations within the said state.

If the States of Wisconsin, North Dakota and South Dakota, and other states through which the lines of the said Railway Company pass, should each of them fix and establish rates and tariffs for the transportation of passengers and of merchandise and commodities similar to those sought to be established by the said Acts of April 4, 1907, and April 18, 1907, of the State of Minnesota, and by the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, the result would be that the interstate rate which might be charged by the said Railway Company for the transportation of passengers or freight, as the case may be, could not practically be greater than the sum of the local rates, and therefore, would be wholly governed and controlled by the rates so established by such respective states, and not by the laws of the United
604 States.

As applied to the said Railway Company, having regard to the conditions above described, and in view of the legal obligation of the said Railway Company not to discriminate between the different localities and communities served by it, the said Acts of April 4, 1907, and of April 18, 1907, and the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, and each of them, operate necessarily and directly upon interstate commerce and are a regulation of interstate commerce, in violation of the exclusive power in the premises granted to Congress by the Constitution of the United States.

VIII.

Your Orator further shows that the railway lines and roads of the said Railway Company are well and judiciously located, were built in obedience to public necessity, and are properly equipped and built, having reference to the business of the country, and are well, prudently and economically operated. Its property represents an actual and fair value of not less than $415,000,000, and it could not, as your Orator is advised and believes, be reproduced for that sum.

The said Railway Company owns practically the entire capital stock of the St. Paul, Minneapolis & Manitoba Railway Company, the Eastern Railway Company of Minnesota, the Duluth, Benson and Watertown Railway Company, the Willmar and Sioux Falls Railway Company, the Minnesota and Great Northern Railway Company, the Dakota and Great Northern Railway Company, the Brandon, Devils Lake & Southern Railway Company, the Montana & Great Northern Railway Company, the Great Falls & Canada Railway Company, the Spokane Falls & Northern Railway Com-
605 pany, the Washington & Great Northern Railway Company, the Seattle & Montana Railroad Company and the Montana Central Railway Company, and has guaranteed the principal and interest of the bonds of the said Companies. The total outstanding capital stock of the said Great Northern Railway Company is $150,000,000, and the total amount of the outstanding bonds of the said subsidiary railroad companies so guaranteed by the said Great Northern Railway Company exceeds the sum of $114,000,000. The railways of all the subsidiary companies, except those of the

Willmar & Sioux Falls Railway Company, the Montana Central Railway Company, the Spokane Falls & Northern Railway Company and the Great Falls & Canada Railway Company, are operated by the said Great Northern Railway Company under lease thereof.

Your Orator further shows that the cost and expense of the transportation of passengers, and of merchandise and commodities, between stations in the said State of Minnesota, is as great as the cost and expense of such transportation in other states through which the lines of the said Railway Company run, and the cost and expense of such transportation of passengers, merchandise and commodities between stations in said State of Minnesota is far greater per mile than the cost of interstate passenger and freight traffic which moves for longer distances over its lines of railway.

The cost and expense to the said Railway Company of maintaining and operating its said lines of railway, and the cost and expense incident to the transportation of passengers, merchandise and commodities, both within the State of Minnesota and elsewhere, has steadily and largely increased during recent years. The salaries and wages of its employees have been largely increased from year to
606 year, and during the last six months more than ten per cent. The cost of all materials used in the maintenance and repair of the lines of the said Railway Company, and of all railroads in this section of the country, has largely increased within the past few years, and particularly within the past year, more than twenty-five per cent. The taxes on the properties of the said Railway Company have largely increased from year to year, and particularly within the State of Minnesota.

Your Orator further shows that, as he is advised and believes, the probable volume of business local to Minnesota, both in passenger traffic and in the merchandise and commodities transported over its lines of railway, during current and subsequent years, will not greatly exceed the volume of such business transacted during the year ended June 30, 1906, and the cost and expense of transacting all of such business will increasingly exceed the cost of transacting the same class of business for the said year ended June 30, 1906.

IX.

As your Orator is advised and believes, the passenger rates in force prior to the enactment of the said Act of April 4, 1907, upon all the lines operated by the said Railway Company upon the lines and the portions of said lines wholly within the State of Minnesota, were reasonable and low. None of the said rates were unreasonably high, and many of them were and had been for a long time past, unreasonably low and have not yielded a fair and reasonable return upon the investment in the said lines of railway and the equipment necessary to perform the service of such transportation; and such rates were also relatively low as compared with the rates and charges for
607 the transportation of freight. Such rates for local transportation of passengers within the State of Minnesota were not higher than they should be, as compared with the rates maintained and collected by the said Railway Company in other states through

which its lines of railway run, and the same have not been and were not unreasonably high as compared with the rates charged by the said Railway Company for the interstate transportation of passengers.

During the year ending June 30, 1906, the total number of passengers carried one mile by the said Railway Company between points within the State of Minnesota was 82,945,846, and the revenue derived therefrom to the said Railway Company was $2,051,351.38, making an average of 2.473 cents for each passenger carried one mile.

If the rate and charge for such passenger transportations within the State of Minnesota had been two cents for each passenger per mile on all business previously paying over two cents a mile, the gross receipts of the said Railway Company from such passenger traffic would have been $1,568,561.48 a decrease of $482,789.90.

The cost and expense to the Railway Company of the transportation of its said passengers over its lines wholly within the state of Minnesota, during the year ended June 30, 1906, so nearly as the same can be estimated were more than $2,000,000 and over $500,000 more than what would have been the total gross receipts of the said Railway Company from such passenger business under the two cent rate.

The passenger rate, therefore, prescribed by said Act of April 4, 1907, would not and will not, if the same be enforced in cur-
608 rent and future years, afford the said Railway Company sufficient revenue to pay the cost of transacting the passenger business upon its lines within the State of Minnesota, and would not and will not, if the same be enforced, yield any return whatever upon the investment of the said Railway Company in its lines and properties and the equipment necessary to perform the service of said transportation, and the said rate, therefore, would be and will be, if enforced, unreasonably and unjustly low, and not only non-compensatory, but confiscatory, and would and will, if enforced, deprive the said Railway Company and your Orator of property without due process of law, in violation of the provisions of the Constitution of the United States.

Your Orator further shows that no reduction can be made in the local passenger rates and charges within the State of Minnesota without similar and corresponding reduction being made in the local rates and charges in other states upon the lines of the said Railway Company, and the interstate passenger rates and charges of the said Railway Company were and had been prior to May 1, 1907, so adjusted that under the provisions of the said Act of April 4, 1907, the reduction of the passenger rates and charges prescribed by said Act would and will necessitate a reduction in a large number of interstate passenger rates and charges of the said Railway Company, which were, had been and are now just, fair and reasonable, and such reduction would and will result in the loss of a large amount of revenue to the said Railway Company, exceeding, on the basis of the business of the fiscal year 1906, the sum of $370,000.

The said Railway Company cannot legally discriminate in its passenger rates and charges between different places and persons, and

the interstate passenger rates and charges which may or might
609 be charged by the said Railway Company cannot practically be greater than the sum of the local passenger rates and charges between the same points and intermediate points. If the said Act of April 4, 1907, and the rates prescribed thereby shall continue to be in force, the said Railway Company will of necessity be required to apply similar rates to its interstate business in the State of Minnesota, and thus largely reduce its interstate passenger rates and charges and the earnings therefrom and will thereby be deprived of the revenue sufficient to pay the actual costs and expenses of conducting said business.

Your orator therefore shows and alleges that the said Act of April 4, 1907, and the reduction of the passenger rates of the said Railway Company prescribed thereby, and which have actually been in force and effect upon the lines of the said Railway Company within the State of Minnesota since the first day of May, 1907, are unjust, unreasonable and confiscatory, and would and will, if continued in force and effect, deprive your Orator and the said Railway Company of its property without due process of law, and would and will deprive it of the equal protection of the law, contrary to and in violation of the Constitution of the United States and the amendments thereof.

X.

As your Orator is advised and believes, the tariffs and charges of the said Railway Company at and prior to the date of the promulgation of said orders of September 6, 1906, and May 3, 1907, covering the merchandise specified in the said orders, and the tariffs
610 and charges now in force upon the said Railway Company covering the commodities specified and included in said Act of April 18, 1907, were and are reasonable and low, none of the said tariffs and charges were unreasonably high, and many of them are and have been for a long time past unreasonably low and have not yielded a fair and reasonable return upon the investment in the said lines of railway and the equipment necessary to perform the service of the transportation of such merchandise and commodities.

Such tariffs and charges for the local transportation of the said merchandise and commodities within the State of Minnesota were not and are not higher than they should be, as compared with the tariffs and charges maintained and collected by said Railway Company in other states through which its lines of railway run, and the same have not been and are not unreasonably high, as compared with the tariffs and charges of the said Railway Company for the transportation of such merchandise and commodities in interstate traffic; and the said tariffs and charges in force prior to and at the time of the promulgation of the said orders and the said Act, on the merchandise and commodities mentioned therein respectively, are and have been reasonable and just, in comparison with the tariffs and charges of the said Railway Company in other states and upon interstate traffic, and such tariffs and charges were and are relatively reasonable just and low as compared with each other and with the tariffs and charges for the transportation of passengers.

As your Orator is advised and believes said Railway Company has within the past year largely reduced the tariffs and charges for transportation upon its lines, both interstate and intrastate, upon the merchandise and commodities specified in the said orders of September 6, 1906, and May 3, 1907, and in the said Act of April 18, 1907. The said orders of September 6, 1906, and May 3, 1907, prescribe and establish a still further reduction in the tariffs and charges previously in force for the transportation of merchandise shipments over the lines of the said Railway Company within the State of Minnesota, which said reduction amounts to twenty per cent. of the tariffs and charges previously in force, and which said reduction applied to the business of the fiscal year 1906, would result in a loss of over $330,000. in the gross earnings from that class of business, and the said Act of April 18, 1907, would and will, if the same be enforced, reduce the tariffs and charges for the transportation of the commodities mentioned therein over the lines of the said Railway Company within the State of Minnesota, about thirteen per cent. below the tariffs and charges previously in force for the transportation of such commodities, during the fiscal year 1906, and would and will on the basis of the business of said year 1906, effect a reduction in the gross earnings on that class of business of more than $400,000.

611

And the said Railway Company, as your Orator is advised and believes, did not and does not, under the tariffs and charges in force prior to the promulgation of said orders of September 6, 1906, and May 3, 1907, upon merchandise, and under the tariffs and charges now in force upon the commodities mentioned in the act of April 18, 1907, earn any sum in excess of the cost of economically operating its said lines of railway and a fair and reasonable return upon the investments in its said lines of railroad and the equipment necessarily used in the handling of such traffic, and the said tariffs and charges so attempted to be fixed and established by said orders of September 6, 1906, and May 3, 1907, and the said Act of April 18, 1907, will not afford to the Railway Company, during the current and future years, sufficient revenue to pay for the cost and expense of the transportation of the said merchandise and commodities to which the said tariffs and charges are applicable, and yield any fair or just return upon the investment of the said Railway Company in its lines and properties and the equipment employed in such service.

612

Your Orator further shows that no reduction can be made in the local tariffs and charges upon merchandise and commodities in Minnesota without similar and corresponding reduction being made in the local tariffs and charges upon the same merchandise and commodities in other states upon the lines of the said Railway Company, and the interstate tariffs and charges of the said Railway Company are and have been so adjusted that the reductions in the tariffs and charges of said Railway Company prescribed by the said orders of September 6, 1906, and May 3, 1907, and the said Act of April 18, 1907, would and will necessitate a reduction in a large number of interstate tariffs and charges of the said Railway Company, which are

now just, fair and reasonable, and the same would and will result in the loss of a large amount of revenue to the said Railway Company exceeding on the basis of the business of the fiscal year 1906, under the operation and effect of said orders, the sum of $174,000 and under the operation and effect of said Act of April 18, 1907, the sum of $450,000.

The tariff and charges prescribed in the said order of September 6, 1906, and in the said Act of April 18, 1907, are determined upon the basis of allowing a charge for a terminal service plus a
613 per mile charge for hauling service, the hauling service charge per mile being materially higher for short distances than for long, and after a distance is reached of from two to three hundred miles, varying in case of the several commodities named, a constant and very small hauling charge is added for additional distances. The principal or ratio of increase or additional distances above two and three hundred miles in said order, and in said Act is so low as not to pay the actual cost of such haul, and if enforced, would compel the said Railway Company to haul such commodities and merchandise without any adequate compensation, and is therefore unreasonable and confiscatory.

The said Railway Company is engaged in the transportation of said merchandise and commodities, not only wholly within the State of Minnesota, but between points in other states, and is engaged in the transportation of such merchandise and such commodities in interstate traffic. The tariffs and charges specified in said order and in said Act are lower than such tariffs and charges of said Railway Company in interstate traffic. The said merchandise and commodities are handled by the said Railway Company over its lines of railway in interstate traffic in the same trains and with the same employees as similar merchandise and commodities in traffic local to Minnesota. The interstate and intrastate traffic are mingled together, and the circumstances and conditions attending the handling of such merchandise and commodities in interstate traffic are not different from those attending the handling of such merchandise and commodities locally within the State of Minnesota.

The said Railway Company cannot legally discriminate in its tariffs and charges between different places and persons, and
614 interstate tariffs, and charges which might be charged by the said Railway Company cannot practically be greater than the sum of the local tariffs and charges for the transportation of said merchandise and commodities between the same points and intermediate points. If the said order and the said Act shall be enforced, the said Railway Company will of necessity be required to apply similar rates to its interstate business, and thus largely reduce its interstate tariffs, and charges and the earnings therefrom, and will thereby be deprived of a revenue sufficient to pay the actual cost and expense of conducting such business.

Your Orator therefore shows and alleges that the said orders of September 6, 1906, and May 3, 1907, and the said Act of April 18, 1907, and the reduction of the tariffs and charges of the said Railway Company therein and thereby prescribed upon the merchandise and

commodities specified therein are each, every and all of them unjust and unreasonable and confiscatory, and they each, every and all of them would and will, if enforced, deprive your Orator and the said Railway Company of its property without due process of law, and deprive him and it of the equal protection of the law contrary to and in violation of the Constitution of the United States and the amendments thereof.

XI.

Your Orator further shows that if the principle upon which the passenger and freight tariffs are attempted to be fixed and established by the Acts of the State of Minnesota and the orders of the Railroad and Warehouse Commission of said State, as above described, and the percentages of reduction effected by the said Acts and the
615 said orders, should be applied to the local business of the said Railway Company in other states through which the lines of the said Railway Company run, by reason of the enactment of similar legislation in such other states, and if the said principle and the said percentages of reduction should thereupon be applied to the long-haul interstate business of the said Company, which would necessarily be the case in the event of the enactment of such legislation, since the interstate rate could not practically be greater than the sum of the local rates, such measure of reduction would leave the said Company without sufficient revenue to pay the actual cost of the maintenance and operation of its system of railroads, and would operate to confiscate the property of the said Railway Company and deprive it of its property without due process of law, in violation of the Constitution of the United States.

XII.

Your Orator further shows and avers that the penalties and punishments denominated by the said Acts of April 4, 1907, and April 18, 1907, for failure to comply with any of the provisions thereof, or with any of the rates or charges prescribed and fixed thereby, are wholly immoderate and unreasonable and excessive, and bear no just comparison to the causes or matters in respect to which they are denounced, and that said excessive penalties are, as your Orator verily believes, prescribed by the said Acts with a view and intention that the same shall appear as a threat and a menace to said Railway Company and other Railway Companies subject to the operation of said Acts, to the end that they may be thereby compelled and co-
616 erced into the adoption of the said rates and charges prescribed by the said Acts, whether or not the same shall be fair, reasonable and just or conformable to the Constitution of the United States. That the enforcement of the multiplied and excessive penalties and punishments prescribed by the said Acts would result in serious loss, damage and bankruptcy to Railway Companies subjected thereto, including the said Great Northern Railway Company, and the operation of the said Acts in this respect is harsh, unreasonable and confiscatory, and your Orator avers that the said Acts are,

and each of them is, in this respect, contrary to and in violation of the Constitution of the United States and the amendments thereto, and deprives the said Railway Company and your Orator of property without due process of law and denies to it and to them the equal protection of the law.

XIII.

Your Orator further shows that he is now, and for many years last past has been continuously a shareholder in the said Great Northern Railway Company, owning 300 shares of the stock of said Company, each of which shares is worth and of the value of more than one hundred dollars ($100) per share, and he brings this bill in his own behalf and on behalf of all the other stockholders in the said Railway Company similarly situated who may join herein.

XIV.

That heretofore and on or about the 24th day of July, 1907, and prior to the institution of this suit, your Orator on his own behalf and on behalf of all other stockholders in the said company, caused to be served on the President and every member of the Board
617 of Directors who are the Managing Directors of the said Great Northern Railway Company, a written request or demand, a copy of which is hereto annexed and marked "Exhibit E" and hereby made a part hereof, with like effect as though here fully and at large set forth, and thereafter, as your Orator is advised and believes, his said request and demand were duly presented and considered at a meeting of the said Board of the Managing Directors of said Railway Company, held in the City of St. Paul on the 31st day of July, 1907, at which meeting a quorum of the said Directors was present, and a resolution was duly and unanimously adopted at the said meeting of the said Board, a copy of which said resolution was thereafter transmitted to your Orator by the Secretary of the said Board, and a copy of which is also hereto annexed and marked "Exhibit F" and hereby made a part hereof with like effect as if the same were here fully and at large set forth.

Your Orator further shows that as he is advised and believes, and as appears from the resolution "Exhibit F" hereto annexed, the reason why the President and the Managing Directors declined and refused to comply with his said demand was not in any manner or degree because they considered the rates prescribed by the said orders and acts would yield a fair and just return upon the property of the said Railway Company, but solely because they could not subject themselves and the other officers, agents and employees of the said Railway Company, and the property of the said Railway Company to the drastic and enormous penalties and punishments which might fall upon them in the event of their failure to obey the said laws and orders, or in the event of any action on their part to test the validity of the same.

618 Your Orator further shows that he is advised and believes that any request or demand upon the President and Manag-

ing Directors of the said Railway Company or any effort to induce them to cease obedience to the said Acts or orders, or to decline to obey the same, or to take any proceedings to test their legality would necessarily be futile for the reason that the said Acts are so framed that no railway corporation coming within their provisions or the provisions of either of them could, pending an action by the corporation itself to test the validity thereof, protect itself, its officers, agents and employees against the highly penal provisions thereof or be protected against the said highly penal provisions, if it should be determined that such laws or either of them were valid.

And your Orator further shows that he is advised and believes that the said highly penal provisions of the said Acts were inserted therein for the express purpose of rendering any action by corporations coming within their provisions to test the legality thereof, difficult if not impossible.

Your Orator further shows that he has requested the Directors to call a meeting of the stockholders to consider and take action in the premises, and that as appears by the resolution, a copy of which is hereto annexed, they have declined so to do. That the stockholders of the said Company are extremely numerous and widely scattered, living in this and foreign countries, and that it is impracticable for your Orator to procure a meeting of the said stockholders within such time as would be necessary in order that your Orator and other stockholders might have relief in the premises.

619 And your Orator further shows that in the event of a meeting of the shareholders, no action could be taken by them which would lead to action by the corporation itself and its President and Managing Directors to test the legality of the said Acts and orders in Courts, and to enforce the right which is asserted in this suit on account of the said drastic penalties and punishments prescribed in the said acts and the imprisonments of the officers, agents and employees of said Railway Company, and the disastrous and ruinous consequences to the property of the said corporation which would inevitably result from any action by the corporation itself in the premises.

XV.

Your Orator further shows that every freight shipment made upon the said Great Northern Railway which the said Act of April 18, 1907, or the said orders of September 6, 1906, and May 3, 1907, or either of them, seeks to affect and every passenger carried after the first day of May, 1907, may result in an action against the said Great Northern Railway Company and a criminal proceeding against its officers, directors, agents or employees, and that unless said Railway Company accepts and observes or continues to accept and observe said Acts of April 4, 1907, and April 18, 1907, and said orders of September 6, 1906, and May 3, 1907, and submits itself to all of the provisions thereof, and duly adopts and enforces upon its lines the rates, tariffs and charges prescribed therein, notwithstanding that the same are unfair, unreasonable, unjust and confiscatory and in violation of the Constitution of the United States, or unless said Rail-

way Company, its officers, directors, agents or employees, are
620 protected by the order of this Court, the said Railway Company, its officers, directors, agents or employees, will be subjected to an endless number of actions at law and of criminal proceedings, and there will thereupon result a multiplicity of suits against said Railway Company and criminal proceedings both against the said Railway Company, its officers, directors, agents and employés, resulting in the imprisonment of many officers and employés of said Railway Company and serious and irreparable loss, damage and injury to said Railway Company and to your Orator and other stockholders thereof and for which he has no adequate remedy at law.

XVI.

Your Orator further shows that if the said Railway Company, its officers, directors, agents and employés, shall decline to publish and put in force and effect the said order of the Railroad and Warehouse Commission of May 3, 1907, or to continue in force and effect the said order of September 6, 1906, the said Commission and the said Edward T. Young, as Attorney General of the State of Minnesota, in behalf of the said Commission, will institute proceedings by mandamus or otherwise against said Railway Company, its officers, directors, agents or employés, to enforce the said order and all the provisions thereof, and threaten to and will take other proceedings against the said Company and against its officers, directors, agents and employés, to the same end and for the same purpose. That if the said Railway Company, its officers, directors, agents and employés, shall fail or refuse to put into force and effect the rates, tariffs and charges as prescribed by the said Act of April 18, 1907, or shall
fail or refuse to continue to keep in force and effect the pas-
621 senger rates prescribed by said act of April 4, 1907, the said Edward T. Young, Attorney General of the State of Minnesota, threatens to and will institute mandamus or other proceedings for the purpose of enforcing the said Acts and each thereof, and will institute or cause to be instituted other proceedings for the enforcement of the penalties and punishments prescribed therein for the violation thereof.

In consideration whereof, and for as much as your Orator is remediless in the premises by the strict rules of the common law, and can only have relief in a Court of Equity, where matters of this kind are properly cognizable and relievable, your Orator prays that said Acts of the Legislature of the State of Minnesota of April 4, 1907, and April 18, 1907, respectively, and each of them, and the said orders of the Railroad and Warehouse Commission of September 6, 1906, and May 3, 1907, be declared to be in violation of the Constitution of the United States, and therefore, void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés are concerned, and that said Great Northern Railway Company, its officers, directors, agents and employés, be temporarily and permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing

or adopting the tariffs, rates and charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the figures set forth in the said Act.

That said Edward T. Young, Atorney General of the State
622 of Minnesota, Ira B. Mills, Charles F. Staples and William E. Young, constituting the Railroad and Warehouse Commission of said State, be temporarily and permanently restrained and enjoined from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force, the rates, tariffs and charges prescribed by the said orders of September 6, 1906, and May 3, 1907, and that they further be temporarily and permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés, to enforce any penalties or remedy for the violation by the said Railway Company, or its officers, directors, agents or employés, of such orders of September 6, 1906, and May 3, 1907.

That said Edward T. Young the Attorney General, be temporarily and permanently enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company or its officers, directors, agents or employés, to enforce the penalties and punishments specified in said Acts of April 4, 1907, and of April 18, 1907, or either of them.

And that the defendants, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of the said Railway Company, be temporarily and permanently enjoined and restrained from instituting or causing to be instituted any action for any violation of the said orders, or of the said Acts, or either of them, or from demanding
623 that any of the rates, tariffs and charges contained therein, or either of them be given to the said shippers, or any of them.

And that your Orator may have such other or further relief as may be just and equitable in the premises.

May it please your Honors to grant unto your Orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said Great Northern Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, commanding them and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (answer under oath being hereby expressly waived) all and singular the premises, and stand to and for and abide by such order, direction or decree as may be made against them in the premises, and that, pending the final hearing of this cause, a temporary restraining order may be issued as above prayed, and your Orator will ever pray.

HENRY A. JAMES.

DE FOREST BROTHERS,
HOW, BUTLER & MITCHELL,
Solicitors.

ROBERT W. DE FOREST,
HENRY W. DE FOREST,
ROBERT THORNE,
JARED HOW,
Of Counsel.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

STATE OF NEW YORK,
County of New York, ss:

I, Henry A. James, upon oath, say that I am the complainant in the above entitled bill, which I have read and know the con-
624 tents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

HENRY A. JAMES.

Subscribed and sworn to before me this 14th day of August, 1907.
[NOTARIAL SEAL]. JAMES COGAN,
Notary Public, New York County.

My commission expires March 30th, 1908.

625 EXHIBIT A.

An Act Prescribing the Maximum Rate to be Charged for Transportation of Passengers upon Railroads Within the State of Minnesota, Providing for the Enforcement of the Same and Penalties for the Violation Thereof.

SECTION 1. No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, shall charge or collect more than two (2) cents per mile for carrying, over its road on any trip wholly within this state, any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred and fifty (150) pounds in weight, or more than one (1) cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five (75) pounds in weight.

SECTION 2. Any railroad company or any officer, agent or representative thereof, who shall violate any provision of this act, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the state prison for a period not exceeding five (5) years, or by both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after the 1st day of May, 1907.

626 EXHIBIT B.

An Act Relating to Railroad Freight Rates in the State of Minnesota and Defining Certain Duties of the Railroad and Warehouse Commission.

SECTION 1. For the purpose of this act the commodities hereinafter named are classified as follows: Wheat, flax seed, broom corn seed, hemp seed, millet seed, pop corn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven (11); corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry), chopped feed, other than wheat chops, corn flour, corn meal, cotton seed cake, cotton seed hulls, cotton seed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oat meal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve (12); lumber, lath, shinges, sash, doors and blinds shall constitute class thirteen (13); sheep (when carried in double decked cars) and cattle shall constitute class fourteen (14); sheep (when carried in single decked cars) and hogs shall constitute class fifteen (15); hard coal shall constitute class sixteen (16); soft coal shall constitute class seventeen (17);

SECTION 2. The following are hereby established and declared to be the reasonable maximum rates to be charged by Railroad Companies as common carriers of property in the State of Minnesota, for the transportation, in car load lots, of the commodities belonging to the classes named in Section one (1) of this Act, between stations in the State of Minnesota for the distances named in the following schedule, to-wit:

Distance and miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rate for commodities in classification No. 12 in cents per 100 lbs.	Rate for commodities in classification No. 13 in cents per 100 lbs.	Rate for commodities in classification No. 14 in cents per 100 lbs.	Rate for commodities in classification No. 15 in cents per 100 lbs.	Rate for commodities in classification No. 16 in dollars and cents per ton.	Rate for commodities in classification No. 17 in dollars and cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	5.9	5.1	6.8	10.	11.3	.81	.64
60	6.1	5.3	7.0	10.2	11.5	.83	.65
65	6.3	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.4	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95
155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19

Distance and miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rate for commodities in classification No. 12 in cents per 100 lbs.	Rate for commodities in classification No. 13 is cents per 100 lbs.	Rate for commodities in classification No. 14 in cents per 100 lbs.	Rate for commodities in classification No. 15 in cents per 100 lbs.	Rate for commodities in classification No. 16 in dollars and cents per ton.	Rate for commodities in classification No. 17 in dollars and cents per ton.
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59
340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

628 SECTION 3. When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a car load, within the meaning of this act, the weight of the commodity in any one car shall be at least as follows: Class eleven (11) and class twelve (12), twenty-four thousand (24,000) pounds; class thirteen (13) twenty thousand (20,000) pounds; class fourteen (14) nineteen thousand (19,000) pounds; class fifteen (15) fifteen thousand (15,000) pounds; classes sixteen (16) and seventeen (17) thirty thousand (30,000) pounds.

SECTION 4. No Railroad Company, which is a common carrier of property within the State of Minnesota shall charge, take or receive any greater sum for carrying within this State, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided for in Section two of this act for the respective distances therein named.

SECTION 5. This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute in this State. Whenever in a proceeding regularly pending before the Railroad and Warehouse Commission, it shall be made to appear to

the satisfaction of said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned, over the line of any railroad in this State, and such rates when so fixed, shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such
629 orders, and until such order shall have been made by said Railroad and Warehouse Commission the rates herein prescribed shall be the conclusive legal maximum rates for the transportation of the commodities herein enumerated, between points within this State.

SECTION 6. Every railroad company transacting the business of a common carrier within this State shall adopt, and publish and put into effect rates not exceeding the charges specified herein for the transportation by it, between stations upon its line of railroad in this State, of the commodities named in this act, and every officer, director, traffic manager or agent or employee of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by said railroad company of rates not exceeding those specified in this act: and any officer, director, or such agent or employee of any such railroad company who violates any of the provisions of this section, or who causes, or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor and may be prosecuted therefor in any County into which its railroad extends, and in which it has a station, and upon conviction thereof be punished by imprisonment in the county jail for a period not exceeding ninety days.

SECTION 7. If at the time of the taking effect of this act any railroad is maintaining a rate between any two stations in this State that is less than the rate herein prescribed for the same distance, this act shall not be construed as authorizing the raising of such rate.

SECTION 8. This act shall take effect and be in force from and after June 1, 1907.

630 EXHIBIT C.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges Between Stations in the State of Minnesota on the Several Lines of Railroad.

In the above entitled matter the Commission having heard the evidence finds as facts in relation to the merchandise rates on the line of the Great Northern Railway Company:

First. That the Great Northern Railway Company is a corporation organized and incorporated under the laws of the State of Minnesota, and is operating a railroad through various parts of the State of Minnesota and carries freight and passengers for hire.

Second. That the terminal and distance freight rates on merchandise now charged by the Great Northern Railway Company on classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown by the so-called "Western Classification," between stations in the State of Minnesota, are unreasonable.

Third. That the merchandise rates on classes 1, 2, 3, 4, 5, "A," "B," "C," "D," and "E," as shown in exhibit "A," hereto attached and made a part of this order, (according to said Western Classification, with exceptions and changes made by the Minnesota Commission), are reasonable maximum rates between all stations on the line of the Great Northern Railway Company in the State of Minnesota, and what are known as terminal or distributing stations on said railway in said State, and that a rate five per cent.
631 higher than the rate shown in exhibit "A" is a reasonable maximum rate between stations on the line of said railway in this State, neither of which is a terminal or distributing station.

It is therefore ordered, that the reasonable maximum rates on said classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," are reduced and fixed at the rates shown in said exhibit "A" between all stations on the line of said railway in the State of Minnesota, and what are now known as terminal and distributing stations on said railway in said state, to-wit: Minneapolis, St. Paul, St. Cloud, Fergus Falls, Moorhead, Crookston, Sauk Center, Thief River Falls, and such other stations as may hereafter be made terminal or distributing stations, and the Great Northern Railway Company is hereby forbidden to charge any higher rate than that named in said exhibit "A." This order does not prevent the charging of a lower rate than that provided by exhibit "A," but in case a less rate is charged on one class, all classes must be reduced so as to preserve the relative relations between classes fixed in exhibit "A."

Until the further order of the commission, said railway company may charge a rate five per cent. more than shown in exhibit "A" for shipments between stations, neither of which is a terminal or distributing station.

This order shall be in force thirty days after its service.

Dated St. Paul, Minn., September 6th, 1906.

By the Commission,

A. C. CLAUSEN, *Secretary.*

NOTE 1. The matter of joint rates will be the subject of a future order when the necessity for the same is presented.

2. When issuing a schedule of rates, the fraction of a cent, 1 to 24 one-hundredths may be dropped; 25 to 75 one-hundredths
632 may be called one-half cent, and 76 to 99 one-hundredths may be called one cent.

3. In case the Railway Company, in putting in a new schedule of rates, fails to so adjust the "in" rates as to protect the jobbers at the distributing stations other than St. Paul, Minneapolis and Duluth, the Commission will undertake to make the necessary adjustment.

ST. PAUL, MINNESOTA, *September* 7, 1906.

Railroad and Warehouse Commission of Minnesota.

Schedule of Reasonable Maximum Terminal and Distributing Merchandise Rates.

When rates for exact distance are not shown, the rates for the next greater distance as shown on Tariff may govern.
Governed by Western Classification, with exceptions and changes made by the Railroad and Warehouse Commission of Minnesota.

Inter-station Distance rates (other than terminal or Distributing Rates) can be based on 5% above the rates shown in this schedule.

When preparing a schedule of rates the fraction of a mill, 1 to 5/10ths may be dropped; 6 to 9/10ths may be called one mill.

Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.					SPECIAL CARLOAD CLASSES. In cents per 100 lbs.				
	1	2	3	4	Fifth class.	A	B	C	D	E
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
5 miles	12.00	10.00	8.00	6.00	4.80	5.40	4.20	3.60	3.00	2.40
10 miles	12.98	10.82	8.65	6.49	5.19	5.84	4.55	3.89	3.25	2.60
15 miles	13.96	11.63	9.31	6.98	5.58	6.28	4.89	4.19	3.49	2.80
20 miles	14.94	12.45	9.96	7.47	5.98	6.72	5.23	4.48	3.74	2.99
25 miles	15.92	13.27	10.61	7.96	6.37	7.16	5.57	4.78	3.98	3.18
30 miles	16.90	14.08	11.27	8.45	6.76	7.61	5.92	5.07	4.23	3.38
35 miles	17.88	14.90	11.92	8.94	7.15	8.05	6.26	5.36	4.47	3.58

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40 miles	18.86	15.72	12.57	9.43	7.54	8.49	6.70	5.66	4.72	3.77
45 miles	19.84	16.53	13.22	9.92	7.94	8.93	6.94	5.95	4.96	3.97
50 miles	20.82	17.35	13.88	10.41	8.33	9.37	7.29	6.25	5.21	4.16
55 miles	21.80	18.17	14.53	10.90	8.72	9.81	7.63	6.54	5.45	4.36
60 miles	22.78	18.98	15.19	11.39	9.11	10.25	7.97	6.83	5.70	4.56
65 miles	23.76	19.80	15.84	11.88	9.50	10.69	8.32	7.13	5.94	4.75
70 miles	24.74	20.62	16.49	12.37	9.90	11.13	8.66	7.42	6.19	4.95
75 miles	25.72	21.43	17.14	12.86	10.29	11.58	9.01	7.72	6.43	5.14
80 miles	26.70	22.25	17.80	13.35	10.68	12.02	9.35	8.01	6.68	5.34
85 miles	27.68	23.07	18.45	13.84	11.07	12.46	9.68	8.30	6.92	5.54
90 miles	28.66	23.88	19.10	14.33	11.46	12.90	10.03	8.60	7.17	5.73
95 miles	29.64	24.70	19.76	14.82	11.86	13.34	10.37	8.89	7.41	5.93
100 miles	30.62	25.52	20.41	15.31	12.25	13.78	10.72	9.19	7.66	6.12
105 miles	31.60	26.33	21.06	15.80	12.64	14.22	11.06	9.47	7.90	6.32
110 miles	32.58	27.16	21.72	16.29	13.03	14.66	11.40	9.77	8.15	6.52
115 miles	33.56	27.97	22.37	16.78	13.42	15.10	11.75	10.07	8.39	6.71
120 miles	34.54	28.78	23.02	17.27	13.82	15.54	12.09	10.36	8.64	6.91
125 miles	35.52	29.60	23.68	17.76	14.21	15.98	12.43	10.66	8.88	7.10
130 miles	36.50	30.42	24.33	18.25	14.60	16.43	12.78	10.95	9.13	7.30
135 miles	37.48	31.23	24.98	18.74	14.99	16.87	13.12	11.24	9.37	7.50
140 miles	38.46	32.05	25.64	19.23	15.38	17.31	13.46	11.54	9.62	7.69
145 miles	39.44	32.87	26.29	19.72	15.78	17.75	13.80	11.83	9.86	7.89
150 miles	40.42	33.68	26.94	20.21	16.17	18.19	14.15	12.13	10.11	8.08
155 miles	41.40	34.50	27.60	20.70	16.56	18.63	14.49	12.42	10.35	8.28
160 miles	42.38	35.32	28.25	21.19	16.95	19.07	14.83	12.71	10.60	8.48
165 miles	43.36	36.13	28.90	21.68	17.34	19.51	15.18	13.01	10.84	8.67
170 miles	44.34	36.95	29.56	22.17	17.74	19.95	15.52	13.30	11.09	8.87

Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.					SPECIAL CARLOAD CLASSES. In cents per 100 lbs.				
	1	2	3	4	Fifth class.	A	B	C	D	E
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
175 miles	45.32	37.77	30.21	22.66	18.13	20.39	15.86	13.60	11.33	9.06
180 miles	46.30	38.58	30.86	23.15	18.52	20.84	16.21	13.89	11.58	9.26
185 miles	47.28	39.40	31.52	23.64	18.91	21.28	16.55	14.18	11.82	9.46
190 miles	48.26	40.22	32.17	24.13	19.30	21.72	16.89	14.48	12.07	9.65
195 miles	49.24	41.03	32.82	24.62	19.70	22.16	17.23	14.77	12.31	9.85
200 miles	50.22	41.85	33.48	25.11	20.09	22.60	17.58	15.07	12.56	10.00
210 miles	51.20	42.66	34.13	25.60	20.48	23.04	17.92	15.36	12.80	10.24
220 miles	52.18	43.48	34.78	26.09	20.87	23.48	18.26	15.65	13.05	10.43
230 miles	53.16	44.30	35.44	26.58	21.26	23.92	18.61	15.95	13.29	10.63
240 miles	54.14	45.11	36.09	27.07	21.66	24.36	18.95	16.24	13.54	10.83
250 miles	55.12	45.93	36.74	27.56	22.05	24.80	19.29	16.54	13.78	11.00
260 miles	56.10	46.75	37.40	28.05	22.40	25.25	19.64	16.83	14.03	11.22
270 miles	57.08	47.56	38.05	28.54	22.83	25.69	19.98	17.12	14.27	11.42
280 miles	58.06	48.38	38.70	29.03	23.22	26.13	20.32	17.41	14.52	11.62
290 miles	59.04	49.20	39.36	29.52	23.62	26.57	20.66	17.71	14.76	11.80
634										
300 miles	60.02	50.01	40.01	30.01	24.01	27.01	21.01	18.01	15.01	12.00
310 miles	61.00	50.83	40.66	30.50	24.40	27.45	21.35	18.30	15.25	12.20
320 miles	61.98	51.65	41.32	30.99	24.79	27.89	21.69	18.59	15.50	12.40
330 miles	62.96	52.46	41.97	31.48	25.18	28.33	22.04	18.89	15.74	12.59
340 miles	63.94	53.28	42.62	31.97	25.58	28.77	22.37	19.18	15.99	12.79
350 miles	64.92	54.10	43.28	32.46	25.97	29.21	22.72	19.48	16.23	12.98

360 miles.....	65.90	54.91	43.93	32.95	26.36	29.66	23.07	19.78	16.48	13.18
370 miles.....	66.88	55.73	44.58	33.44	26.75	30.10	23.41	20.06	16.72	13.38
380 miles.....	67.86	56.55	45.24	33.93	27.14	30.54	23.75	20.36	16.97	13.57
390 miles.....	68.84	57.36	45.89	34.42	27.54	30.98	24.19	20.65	17.21	13.77
400 miles.....	69.82	58.18	46.54	34.91	27.93	31.32	24.44	20.95	17.46	13.96
420 miles.....	70.80	59.00	47.20	35.40	28.32	31.86	24.78	21.24	17.70	14.16
440 miles.....	71.78	59.81	47.85	35.89	28.71	32.30	25.12	21.53	17.94	14.36
460 miles.....	72.76	60.63	48.50	36.38	29.10	32.74	25.47	21.83	18.19	14.55
480 miles.....	73.74	61.45	49.15	36.87	29.50	33.18	25.81	22.12	18.44	14.75
500 miles.....	74.72	62.26	49.32	37.36	29.89	33.62	26.15	22.42	18.68	14.94

635 EXHIBIT D.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Commodity Rates to Distributing Centers, Hereinafter Named, on the Line of the Great Northern Railway.

The matter having come before the Commission, and the evidence therein having been taken and concluded on the 2nd day of May, 1907, the Commission finds that the following named places, all in the State of Minnesota, having heretofore enjoyed distributing rates, are entitled to be known as distributing centres or terminals, viz:

East Grand Forks.	Breckenridge.
Fergus Falls.	Saint Cloud.
Sauk Center.	Thief River Falls.
Crookston.	Moorhead.

And that the rates named in "Exhibit C" hereto annexed, are reasonable maximum rates in carload lots from the terminals of St. Paul, Minneapolis and Minnesota Transfer to said distributing centers on the freight articles mentioned in said Exhibit, and that the regulations and minimums marked upon said Exhibit are reasonable minimums and regulations in regard to such rates.

It is therefore ordered, that the rates between St. Paul, Minneapolis and Minnesota Transfer and said distributing points above named, over the Great Northern Railway, are hereby fixed as in "Exhibit C"; and said Railway Company is hereby forbidden to charge any higher or greater rates than the rates above named on the commodities named in "Exhibit C."

This order shall take effect on the 3d day of June, 1907.

By the Commission,

A. C. CLAUSEN, *Secretary.*

Dated St. Paul, Minn., May 3rd, 1907.

636 EXHIBIT E.

NEW YORK, *July* 24, 1907.

To the President & Directors of the Great Northern Railway Co., St. Paul, Minn.

GENTLEMEN: I am and for some years past have been the owner and holder of three hundred shares of the capital stock of your Company.

I am advised that on or about September 6, 1906, the Railroad and Warehouse Commission of the State of Minnesota made an order requiring a large reduction in the freight rates or charges on certain classes of merchandise and commodities carried over your Railroad between points within the State of Minnesota, and that thereafter you published, adopted and put into effect the said rates pre-

scribed by the said order, and have continued and still continue to observe the said order and to transact the said merchandise freight business at the rates prescribed thereby, resulting in a very large reduction in the revenues of your Company from the said business.

On April 2, 1907, the Legislature of the State of Minnesota passed an act which was duly approved by the Governor on April 4, 1907, and which prohibits any railroad company owning or operating or using a line of railroad within or partly within the State of Minnesota, from charging and collecting more than two cents per mile for carrying over its road on any trip wholly within the said State any passenger twelve years of age or over, or more than one cent per mile for any passenger under twelve years of age, and that you have adopted, published and put into effect upon your road the said passenger rates prescribed by the said Act and since the 1st day of May, 1907, when the said Act became effective pursuant to its terms, have continued and still continue to transact the passenger business upon your railroad in the State of Minnesota at the rates prescribed by the
637 said Act, resulting in a large loss in the revenues of the Company from that class of business.

On the 9th day of April, 1907, the Legislature of the State of Minnesota passed an Act which was duly approved on April 18, 1907, requiring a large reduction in the freight rates or charges on certain commodities carried over your Railroad between points within the State of Minnesota, which if adopted or enforced upon your Railroad would result in a large loss in the earnings of your Company upon that class of business, and I am further advised that you were intending and preparing to comply with the provisions of the said Act of April 18, and to publish and put into effect schedules of rates in obedience thereto, and would have done so upon the 1st day of June, 1907, when said Act became effective according to its terms, but for the fact that you were restrained from so doing by a restraining order issued out of the Circuit Court of the United States in the District of Minnesota.

I am further advised that your rates and charges previously in force within the State of Minnesota, upon both merchandise commodities and passengers, being all the classes of business affected by the said order of the Railroad and Warehouse Commission and by the said Acts were fair and reasonable, and bore a proper and fair relation to your rates on similar business in other States through which your lines of Railroad run, and to your rates in your interstate business, and that the reductions in your earnings on your Minnesota business which was or would be affected by the enforcement of the said order of the Railroad and Warehouse Commission and said Acts, are in each case unreasonable and confiscatory, and that the said order and the said Acts and each of them are for that and for other reasons illegal and violative of the constitutional rights of your Company and of myself and the other stockholders thereof.

On behalf of myself and all other stockholders, I protest against the said order and the said Acts, and against the adoption or
638 enforcement of the rates prescribed thereby as unreasonable, confiscatory and illegal, and I protest against your action in

accepting and adopting the rates prescribed by the said order and by the said passenger Act approved April 4, 1907, and your proposed acceptance and adoption of the rates prescribed by the said Act of April 18, 1907, and I demand on behalf of myself and of all other stockholders that you cease compliance with and obedience to the said order of the Railroad and Warehouse Commission, and that you cease to accept and adopt the rates prescribed thereby on the business to which the same applies, and that you restore the rates previously in force upon the said class of business, and I further demand that you cease compliance with and obedience to the said Act of the Legislature approved April 4, 1907, prescribing a maximum passenger rate of two cents per mile, and that you cease transacting your passenger business upon the said rates, and that you restore the rates previously in force in your passenger business, and on behalf of myself and all other stockholders I further demand that you refuse to accept, adopt or enforce the rates prescribed by the said Act of the Legislature approved April 18, 1907, with respect to the business to which the same applies.

And on behalf of myself and all other stockholders of your Company, I demand that you cause to be brought forthwith by and on behalf of the said Great Northern Railway Company a suit or suits in the Circuit Court of the United States, or in some other Court having jurisdiction of the matter, to have the said order of the Railroad and Warehouse Commission and the said Acts of the Legislature of Minnesota, and each of them, declared illegal and void, and to enjoin and prevent the enforcement of the same.

I further demand on behalf of myself and all other stockholders of your Company that you forthwith call and cause to be held, a meeting of your Board of Directors for the purpose of taking
639 action upon this protest and demand, and that in the event of the unwillingness of your Board to take the affirmative action hereby demanded, that you call forthwith and cause to be held a meeting of the stockholders of your Company, and present the matter to them for consideration and action.

Yours respectfully,

HENRY A. JAMES,
Lakewood, New Jersey.

640 EXHIBIT F.

Resolution of Board of Directors of Great Northern Railway Company.

Whereas: Henry A. James, a shareholder of record of this company, owning three hundred shares of this company's stock, has served a writing upon the President and each of the directors of this company, (1) protesting, on behalf of himself and all other stockholders, against the adoption and maintenance by this company of the rates for the transportation of merchandise and commodities between points in the state of Minnesota established and published by the Railroad and Warehouse Commission of the State of Minnesota by a certain order dated the 6th day of September 1906; and

against the adoption and maintenance by this company of the two cent passenger fare law enacted by the Legislature of the State of Minnesota approved April 4, 1907; and also protesting against the threatened adoption by this company of the rates on commodities fixed in and by an act of the Legislature of the State of Minnesota approved April 18, 1907; (2) demanding, on behalf of himself and all other stockholders, that this company forthwith cease compliance with said order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and with said passenger fare law of April 4, 1907; and refuse to accept and adopt the rates fixed by said orders and said laws; and that this company refuse to accept, adopt or enforce the rates prescribed by said Act of April 18, 1907; and demanding, on behalf of himself and all other stockholders of this company that this board cause suit to be brought on behalf of this company in some court of competent jurisdiction to have said order and said acts of the Legislature and each of them declared illegal and void, and to enjoin and prevent the enforcement of the same; and further demanding, on behalf of himself
641 and all other stockholders of this company that in case this board refuses to comply with said demand, a meeting of the stockholders be forthwith called to act upon the same;

Resolved: That this board hereby declines and refuses to take the action demanded by said Henry A. James, and hereby declines to desist from maintaining the merchandise rates fixed by said order of the Railroad and Warehouse Commission of the State of Minnesota dated September 6, 1906, or said passenger rates fixed in and by said act of the Legislature of the State of Minnesota approved April 4, 1907; or to fail to adopt and enforce said rates fixed in and by said act of the Legislature of the State of Minnesota of April 18, 1907, except so far and so long as this company is by order of court enjoined from adopting the same.

Resolved further: That this board hereby declines and refuses to call any special meeting of the stockholders of this company to act upon said demand.

This board hereby states as the facts and reasons for its refusals aforesaid, the following: While this board regards the rates fixed by the order of the Railroad and Warehouse Commission of Minnesota of September 6, 1906, referred to by Mr. James, as unreasonably low, it did adopt and put said rates in force pending a further hearing then in progress before said board of Railroad and Warehouse Commissioners upon the subject of rates upon unclassified commodities, in the belief that because of the reductions in its grain rates in Minnesota voluntarily made by this company on September 1, 1906, and reductions voluntarily made by this company in its coal rates in Minnesota, which became effective October 1st, 1906, said Railroad and Warehouse Commission of the State of Minnesota would not make any other or further reduction in this company's freight rates.

This board is advised by counsel that it cannot cease to maintain said rates fixed by said order of September 6, 1906, with-
642 out first securing the consent of the Railroad and Warehouse Commission, and this board does not believe such consent can be secured.

On the 14th day of December, 1906, said Railroad and Warehouse Commission of Minnesota did make another order reducing the rates in force on this company's lines of railway in Minnesota on grain, grain products, seeds, lumber, live stock, hard and soft coal, to such an extent that the directors regarded said rates as confiscatory of the property of the company, and in order to protect the interests of the company and its shareholders the directors caused a suit to be commenced and obtained a preliminary restraining order against the enforcement of said rates of said Railroad and Warehouse Commission, in which the reasonableness of the classified rates fixed by the order of September 6th, 1906, was involved. While this suit was pending and during the continuance of said restraining order the Legislature of Minnesota passed the acts approved April 4, 1907, and April 18, 1907, mentioned in Mr. James' communication.

It is the opinion of this board of directors that the rates fixed in and by said acts are unjust, unreasonable and confiscatory of the property of the company and of its shareholders, and unlawfully interfere with interstate commerce; and that said order of the Railroad and Warehouse Commission is void, and that the laws passed by said Legislature as aforesaid, are unconstitutional and void. But this board is advised by counsel that this company has no standing in court to prevent the enforcement of the penalties fixed in and by said laws and by other laws of the State of Minnesota inflicting penalties for refusal to obey orders of said Railroad and Warehouse Commission, by injunction or other order of court; and that the only method in which this company and its officers and agents can test the validity of said laws and said order is to refuse to obey
643 the same and take the chances of the court holding the laws and order invalid; in which case enormous penalties might be enforced against the company and its directors, officers and agents, including imprisonment.

The directors are further advised that the penalties accruing would amount to many millions of dollars each day. These penalties are imposed directly upon the officers and agents, as well as upon the company, and the members of this board, in view of the heavy penalties and the punishment by imprisonment provided by the laws, do not feel that they should test these laws in criminal prosecutions, owing to the difficulty of trying out the question of the reasonableness of these rates before juries in criminal proceedings.

The members of this board, in view of this fact, would decline to obey any direction of the shareholders assembled in special or regular meeting to take the action demanded by Mr. James, because of the penalties hereinabove referred to.

644 I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the board of Directors of the Great Northern Railway Company held on July 31st, 1907.

[SEAL.]

F. W. DOBBETT,
Ass't Secretary.

645 "EXHIBIT C."

(Referred to in Commissioners' Order.)

Railroad and Warehouse Commission.

Schedule of Reasonable Carload Commodity Rates.

ST. PAUL, MINN., *May 3rd*, 1907.

Commodities.

Cider and Vinegar, straight or mixed C. L., minimum weight 30,000 pounds.

Pickles; Kraut Cucumber, Tomato, Cauliflower and Onion; also Vinegar; in tin cans, boxed or crated, in glass or stone, boxed or in barrels, kegs, kuts, pails or tubs; also Table Sauces, including Catsup, Horseradish, prepared, Mustard prepared, Pep-er Sauce and Salad Dressing, in glass boxed; in tin cans, boxed or crated, or in bulk in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Condensed milk and Evaporated Cream, in glass, boxed, in cans, jacketed, boxed or crated, or in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Fruits, Vegetables, Cove Oysters, and Catsup; in tin cans, boxed or crated, or in glass or stone jars, boxed, straight or mixed C. L., minimum weight 30,000 pounds.

Paper, Building, Roof, and Wrapping, in bundles, rolls, boxes or crates, also Paper Bags in bundles, straight or mixed C. L., minimum weight 30,000 pounds.

Sugar (not Maple) C. L., minimum weight 30,000 pounds.

Syrup, Glucose Jelly, Molasses, Preserves and Fruit Butter in wood; in tin cans, boxed or crated, or in glass or jugs, boxed; C. L., minimum weight 30,000 pounds.

Coffee, Green or Roasted, in bags, barrels or drums, also in packages, tin cans or pails, crate or boxed, in straight or mixed C. L., minimum weight 24,000 pounds.

646 Rice, in bags, or in packages boxed; straight or mixed C. L., minimum weight 30,000 pounds.

Beans, dry, in bags, C. L., minimum weight 30,000 pounds.

Canned Sardines, in tin cans, boxed or crated, C. L., minimum weight 30,000 pounds.

Reasonable Maximum Carload Commodity Rates Over the Lines of the Great Northern Railway Company on the Commodities Named in this Exhibit.

From St. Paul, Minneapolis and Minnesota Transfer.

To	Rates in cents per 100 pounds.
East Grand Forks	21.79
Crookston	20.62
Thief River Falls	22.58
Fergus Falls	15.52
Breckenridge	17.48
Moorhead	18.66
Sauk Center	10.82
St. Cloud	6.50

Endorsement: Bill of Complaint. Filed August 19th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

647 Circuit Court of the United States, District of Minnesota, Third Division.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

Præcipe for Chancery Subpœna.

To the Clerk of the Above Named Court:

Please issue Chancery Subpœna in the above entitled cause, directed to the above named defendants and deliver the same to the Marshal for service.

Dated St. Paul, Aug. 19th, 1907.

HOW, BUTLER & MITCHELL,
JARED HOW,
Solicitor for Complainant.

Endorsement: Præcipe for Chancery Subpœna. Filed August 19th, 1907. Henry D. Lang, Clerk, By Louise D. Trott, Deputy.

648 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

1907.

Aug. 19th.

The complainant herein having filed a Bill of Equity in this cause, on application of How, Butler & Mitchell, solicitors for said complainant, it is hereby ordered that a Chancery Subpœna issue as therein prayed.

C. R. "C" page 6.

649 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Great Northern Railway Company by handing to and leaving a true and correct copy thereof with F. W. Bobbett, Assistant Secretary of above named company, personally, at St. Paul in said District on the 20th day of August, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Edward T. Young, Ira B. Mills and William E. Young, by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul in said District on the Twentieth day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Charles F. Staples (a Railroad Commissioner for the State of Minnesota) by handing to and leaving a

true and correct copy thereof with Ira B. Mills (in the office of the State Railroad Commissioners), personally, at St. Paul in said District on the Twentieth day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

650 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Walter Scott and H. P. Webb by handing to and leaving a true and correct copy thereof with each of them personally at Sandstone in said District on the 22nd day of August, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named L. Larson and John Palm, by handing to and leaving a true and correct copy thereof with each of them personally at Litchfield in said District on the 26th day of Aug. A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshall,
By FRED'K VAN DOREN,
Deputy.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named S. S. Glarum, by handing to and leaving a true and correct copy thereof with him personally at Willmar in said District on the 27th day of Aug. A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshall,
By FRED'K VAN DOREN,
Deputy.

651 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein named defendant Thomas Gunnes by leaving a true copy thereof for him, at the house of the usual abode of said Thomas Gunnes with Mrs. Mollie Gunnes, a person of suitable age and discretion then resident therein, at Barnesville in said District, the 22nd day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By H. A. RIDER, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, Third Division.

The President of the United States of America to Great Northern Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of October next, at the city of Saint Paul, then and there to answer the Bill of Complaint of Henry A. James, a citizen of the State of New Jersey, filed against you on the 19th day of August, A. D. 1907; hence fail not.

652 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 19th day of August, 1907.

Issued at my office in the city of St. Paul, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.]

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

Memorandum.

The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

ROBERT W. & HENRY W. DE FOREST,
ROBERT THORNE, &
HOW, BUTLER & MITCHELL,
Complainants' Solicitors.

Endorsement: Chancery Subpœna. Filed August 30th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

653 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Great Northern Railway Company, by exhibiting Judge Lochren's signature on the original Order and also by handing to and leaving a true and correct copy thereof with F. W. Bobbett, Assistant Secretary of the above named company, personally at St. Paul in said District on the 20th day of August, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Edward T. Young, Ira B. Mills and William E. Young, by handing to and leaving a true and correct copy thereof with each of them, also by exhibiting Judge Lochren's signature on Original thereof, personally, at St. Paul in said District on the Twentieth day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Charles F. Staples (a Railroad Commissioner for the State of Minnesota), by handing to and leaving a true and correct copy thereof with Ira B. Mills (in the office of the State Railroad Commissioners) and by exhibiting to him Judge Lochren's signature on the Original Order, personally at St. Paul in said District on the Twentieth day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

654 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Walter Scott and H. P. Webb, by handing to and leaving a true and correct copy thereof with each of them personally at Sandstone in said District on the 22nd day of August, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By GEO. J. MALLORY, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order & Order to Show Cause on the therein-named L. Larson & John Palm, by handing to and leaving a true and correct copy thereof with each of them, also by exhibiting to him Judge Lochren's signature on the Original thereof, personally at Litchfield in said District on the 26th day of Aug., A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED'L VAN DOREN,
Deputy.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order & Order to Show Cause on the therein-named S. S. Glarum, by handing to and leaving a true and correct copy thereof with him, also by exhibiting to him Judge Lochren's signature on the Original thereof, personally, at Willmar in said District on the 27th day of Aug., A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED'K VAN DOREN,
Deputy.

655 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Order to Show Cause on the therein named defendant Thomas Gunnes by leaving a true copy thereof for him, at the house of the usual abode of said Thomas Gunnes with Mrs. Mollie Gunnes, a person of suitable age and discretion then resident therein, at Barnesville, in said District, the 22nd day of August, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By H. A. RIDER, *Deputy.*

Circuit Court of the United States in and for the District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,
against
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

The complainants having filed their verified bill of complaint in this Court against the defendants above named, praying for a temporary and permanent injunction, and in the meantime for a restraining order, and this Court having duly read and considered said bill of complaint:

Now, on motion of How, Butler & Mitchell, and DeForest Brothers, solicitors for said complainants,

656 It Is Ordered, that said defendants, and each of them, show cause before this Court at the Federal Building, at Saint Paul, Minnesota, on the 3rd day of September, 1907, at ten o'clock in the forenoon of that day, why a temporary injunction should not issue in accordance with the prayer in said bill of complaint contained.

That in the meantime, and until further order of the Court in the premises, the said defendant, Great Northern Railway Company, its officers, directors, agents and employees, be and they are hereby restrained from publishing or adopting the classifications, tariffs and charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and described in said complaint, or from reducing its tariffs to the figures set forth in said Act.

That in the meantime, and until the further order of the Court in the premises, said defendant, Edward T. Young, Attorney General of the State of Minnesota, is hereby restrained from taking, or causing to be taken, any action, step or proceeding against said Railway Company, its officers, directors, agents or employees, to enforce the penalties and remedies specified in said Act, approved April 18, 1907.

Dated St. Paul, Minnesota, August 19, 1907.

WM. LOCHREN, *Judge.*

Endorsement: Restraining Order and Order to Show Cause. Filed August 19th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

657 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 3RD, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.
By Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOPLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness & S. S. Glarum.

This day come the parties to the above entitled causes by their respective solicitors, Messrs. Jared How, Pierce Butler, Edward S. Robert, Robert Thorne, Stiles W. Burr, John F. McGee, ap-
658 pearing on behalf of the complainants and Messrs. Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson, appearing on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young and C. W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, William R. Begg, appearing on behalf of the defendant Great Northern Railway Company, F. W. Root, appearing on behalf of the defendant Chicago, Milwaukee & St. Paul, Railway Company, Samuel A. Lynde, appearing on behalf of the defendant Chicago and Northwestern Railway Company, Thomas Wilson, appearing on behalf of the defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company, George W. Seever appearing on behalf of the defendant Minneapolis & St. Louis Railway Company, A. G. Briggs, appearing on behalf of the defendants Chicago Great Western Railway Company, A. B. & S. Stickney, Ansel Oppenheim, L. S. Cass, Wm. E. Pickney, L. P. Elmer F. Weyerhaeuser, J. W. Lusk, R. C. Wright and H. Fletcher, and Alfred E. Boyesen appearing on behalf of the defendant Northwestern Fuel Company, Alfred H. Bright appearing on behalf of the defendant Minneapolis, St. Paul & Sault Ste. Marie Railway Company, McNeil V. Seymour appearing on behalf of the defendant Chicago, Rock Island and Pacific Railway Company, and the same coming now on for hearing upon the orders to show cause heretofore issued in each of said causes, on the 29th and 31st day- of May A. D. 1907, returnable on the 8th day of July A. D. 1907, and an order to show cause issued on the 19th day of August A. D. 1907, returnable on the 3rd day of September A. D. 1907, and which said orders to show cause were on the 8th day of July A. D. 1907, and thereafter postponed and continued for hearing from time to time to this time and place, and now coming on to be heard, upon the agreement and consent of the solicitors for the respective parties to the above entitled causes, it is by the Court ordered that the affidavits heretofore filed

on behalf of the respective parties thereto may be used in each of said causes so far as the same are applicable thereto and that the arguments to be made by the respective solicitors hereto may be
659 considered as applying to al-, of said causes so far as the same are applicable thereto and to the individual causes represented by said solicitors so far as directed thereto.

Mr. Jared How thereupon opens, states and argues said causes to the Court upon the said orders to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Stiles W. Burr argues further upon the orders to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler argues further upon the application for a temporary injunction and orders to show cause on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same is hereby postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

660 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 4TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf
661 of the complainants.

And the trial of said cause not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

662 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 5TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues upon the order to show cause and application for a temporary injunction on behalf of the complainants.

663 And the hearing of said causes not being concluded at the hour of adjournment it is by the Court ordered that further

proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

664 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 6TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 875.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Robert Thorne resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. John McGee argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

665 Mr. John F. McGee resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

666 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 9TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. John F. McGee resumes anc concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants:

Mr. Stiles W. Burr argues further upon the order to show cause and application for a temporary injunction, on behalf of these complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at teo o'clock P. M.

667 Mr. Edward S. Robert argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues further upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*.

668 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 10TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Jared How, argues further upon order to show cause and application for a temporary injunction on behalf of the complainants.

Stiles W. Burr, Esq., argues further upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

669 Mr. Stiles W. Burr, resumes and concludes his argument upon said order to show cause and application for a temporary injunction in behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

670 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 11TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien opens, states and argues upon said order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
671 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

A true Record,
Attest:

HENRY D. LANG, *Clerk.*

672 Further record of trial of consolidated causes will be found on page 144.

673 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 23RD, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come the parties to these causes by their respective solicitors, and in accordance with the decision heretofore rendered and entered herein, it is by the Court ordered, that the demurrers of

the defendants, and each of them, in the above entitled causes be and the same hereby are overruled, and that the said defendants in said causes, and each of them, other than the defendants Ira B. Mills, Charles F. Staples and William E. Young, have until the rule day in November within which to file their answer to the bills of complaint in said causes and each of them.

C. Equity. No. 857.

674 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 23RD, 1907.

* * * * * * *

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:
HENRY D. LANG, *Clerk.*

675 Circuit Court of the United States, District of Minnesota, Third Division.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

Upon motion of counsel for complainants, and upon reading affidavits in support thereof and in opposition thereto, and after hearing counsel for complainants and for defendants,

This Court doth order that the defendant Great Northern Railway Company, its officers, directors, agents, servants and employés, and each of them, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from publishing, adopting, or putting into effect the tariffs, rates, or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That the defendant Edward T. Young, as Attorney General of said State of Minnesota, be restrained and enjoined, pending the final hearing of this cause, and until the further order of the Court in the premises, from taking or instituting any action, suit, step or

proceeding to enforce the penalties and remedies specified in
676 said Act or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof;

That the defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and each of them, and all other persons, and each of them, from and after the time that they shall have knowledge of this Order, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from taking or instituting, or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them.

Let a writ issue accordingly.

WM. LOCHREN, *Judge.*

Dated September 23, 1907.

Endorsement: Order for Temporary Injunction. Filed September 23rd, 1907. Henry D. Lang, Clerk.

677 United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK

vs.

GREAT NORTHERN RAILWAY COMPANY, EWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

678 C. Equity. No. 859.

JAMES T. WOODWARD and WILLIAM WOODWARD and GEORGE GIBBS

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

C. Equity. No. 860.

CRAWFORD LIVINGSTON and JAMES T. WOODWARD

vs.

CHICAGO & NORTHWESTERN RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 861.

GEORGE S. BREWSTER and ROBERT S. BREWSTER

vs.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

679 C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, and WILLIAM E. YOUNG.

C. Equity. No. 863.

JOHN A. HUMBIRD

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY, a Corporation; Alpheus B. Stickney, Ansel Oppenheim, Sam C. Stickney, Lewis S. Cass, William E. Pinckney, James P. Elmer, Frederick Weyerhaeuser, James W. Lusk, Robert C. Wight, H. E. Fletcher, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, C. F. Berg, C. H. Tripp, N. P. Johnson, The Northwestern Fuel Company, a Corporation; Western Elevator Company, a Corporation; Lampert Lumber Co., a Corporation; Hubbard Milling Company, a Corporation; Wisconsin Lumber Company, a Corporation; The Simmons Milling Company, a Corporation, and Laird Norton Company, a Corporation.

680 C. Equity. No. 864.

FREDERICK C. BARROWS

vs.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Pine Tree Lumber Company, E. Sauby, and Osborn & McMillan Elevator Company.

C. Equity. No. 865.

JOHN J. CARLE

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Daniel L. Bell, E. B. Swygart, and P. J. Bowlin.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

681 LOCHREN, *J.* (orally):

Gentlemen, I feel that it is a subject of congratulation that through this long-continued contest there has been such uniform

courtesy displayed by counsel on both sides, not only towards the court, but towards each other. The cases have been fully and ably presented to the court, upon both sides. If circumstances permitted, I should be glad to give the cases further consideration than I feel myself able to. In view of the necessity of attending to other business, and especially in view of the fact that the October term in Minneapolis is coming on, I think it better that I dispose of the cases according to my first impressions than to detain them for further examination, which would hinder the ultimate settlement of the issues.

These suits have been brought by one or more stockholders of each of nine railroad companies doing business within the State of Minnesota, and each of them also engaged in interstate business, claiming that the rates fixed by the Railroad and Warehouse Commission, and which have been termed by counsel the "Merchandise rates," as well as the rates fixed by the legislature of the state by the act of April 4th of the present year (called the passenger rate law), and the rates also fixed by the legislature by the act of April 18th of the present year (chapter 232 of the statutes of this year) are so low as to not afford adequate compensation to the railroad companies for the services that they are required to perform and a reasonable return upon the property which is invested by these railroad companies, and used in the business, and therefore are confiscatory under the provisions of the constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law, or deny equality under the laws; that the requiring of the railroad companies to do business at
682 these rates would not afford adequate compensation, and are equivalent to taking their property without due process of law. These bills of complaint are met by demurrers upon various grounds, one of which is, that, being brought against the attorney general and other state officers, but especially the attorney general, they, in fact, amount to actions brought against the state, which are prohibited, so far as the federal courts are concerned, by the eleventh amendment to the constitution of the United States. This matter I disposed of at a preliminary hearing, contrary to that contention, holding that although the state is interested in this matter, these suits are not, in terms nor in necessary effect, actions against the state. No property of the state is affected; no revenues of the state are affected, by the result of the litigation. And although the eleventh amendment to the constitution prohibits suits, or actions, against the state, by citizens of another state or of a foreign country, the fourteenth amendment provides that the state shall not deprive any person of life, liberty or property without due process of law. There must be some way to enforce that provision of the constitution. It is a provision which requires no action of congress to make it effective. It is a prohibition against the state. And if the state, by any act attempts to deprive anyone of life, liberty or property, without due process of law, the courts must provide some adequate remedy for the protection of such person. It would be a reproach to the courts did they fail to provide an ade-

quate remedy in a case of that sort. And it is unnecessary in these cases to hold that the eleventh amendment would be ineffective as against the later provision, in the fourteenth amendment, if the remedy can be reached in another way; and it seems to me that it can—
by tying the hands of the officers of the state, if necessary,
683 in a proper action, and restraining them from attempting to enforce or put in effect a provision of the law of the state which is unconstitutional under the terms of the fourteenth amendment. This has been done in so many cases that it seems to me it does not now require argument to sustain that position. And I therefore hold that that ground of the demurrer is not well taken.

Another ground is that the bills are multifarious, in joining the Warehouse and Railroad Commission and the attorney general, because the acts complained of are separate and distinct acts and the acts of different bodies. The order of the Railroad and Warehouse Commission, of September 6th of last year, was promulgated by that commission under the authority of a legislative act; and, as has been decided in many cases, such an order has the same effect as a legislative act; that is, that the legislature has a right to empower administrative bodies to act in respect to this matter of rates and other matters of regulation concerning public corporations engaged in the business of transportation, so that its order has the same effect as a legislative act. And the other two acts complained of are acts passed by the legislature. They all amount to legislation that has been put forth by the state. And it seems to me that complaints against all these acts may properly be joined in one action, and that the Railroad and Warehouse Commission have such charge in respect to the enforcement of these rates that they can properly be made defendants in an action of this kind, as well as the attorney general.

Another objection is that the bills do not show compliance with the 94th Equity Rule, such compliance being necessary to permit actions of this sort to be brought by stockholders, whereas, matters
in which a corporation is concerned are properly under the
684 management only of the officers and directors of the corporation, who should ordinarily be parties to an action to enforce corporate rights, and providing that such suit will not be allowed to be maintained by a stockholder unless it appears that he has first applied to the officers and directors of the corporation, demanding that they should enforce the rights which he complains are being infringed and secure the safety of his property, the property being, of course ultimately the property of the stockholders, and only upon their refusal to do so will he be allowed to bring an action to protect himself. It seems to me that that has been done sufficiently in these cases. In every one of them an application has been made, either to the directors or to the controlling officers of the corporation whose duty it would be, in a proper case, if it was necessary, to call a meeting of the directors to act upon the matter, and either where the directors have met together or where the matter has been disposed of by the officers, the stockholders have been met with a direct refusal to take any action to protect the property against these al-

leged illegal attacks upon it. The reason alleged by the officers of the company and by the directors for not taking such action was, not that they doubted or denied the claim of the stockholders that this order and these acts were confiscatory and null and void under the constitution, but that by the provisions of the acts themselves such severe penalties were denounced for any attempted violation of the acts, that they ought not to be called upon to incur the danger of those penalties, and would not assume that danger, and, for that reason, would not act in the matter. And it seems to me, in view of the severe penalties denounced by these acts of the legislature, that the officers of the corporations could not have done otherwise than to have refused to act under those circumstances, where their
685 action would have laid them liable to severe penalties; and every subordinate who under their direction should attempt to violate these provisions, being also liable to like penalties, would also refuse. There is no question but that such legislation is vicious, almost a disgrace to the civilization of the age, and a reproach upon the intelligence and sense of justice of any legislature which could enact provisions of that kind. In case of the refusal to issue a ticket at a certain rate which is fixed by the legislature as proper, but which the railroad companies hold to be void and unconstitutional, (and which would be an act of itself not immoral nor malum in se, but would ordinarily afford the person who was refused the privilege of a ticket a right of action against the railroad company,) in case he was in the right and the refusal was wrong, there would be no question but that in a civil action any such person would receive an adequate remedy; there would be no danger that any court or jury would refuse to give ample damages. Beyond question, the result of actions of that kind would be that the damages would almost certainly border on the excessive, instead of failing to remunerate the party for any wrong he would suffer on account of such a refusal. But under the provisions of these laws, acts not immoral or wrong in themselves, but which are only unlawful because prohibited, would entail upon the person refusing to comply with such laws the position of being convicted of a felony. They make the refusal a felony, and impose a punishment very unusual—a fine that might be to the amount of $5,000, or imprisonment in the state prison to the extent of five years, or both, in the discretion of the court; punishments which are applied only to the very highest crimes short of homicide of which men are ever guilty; pun-
686 ishments which would be deemed adequate in cases of burglary, highway robbery, or crimes of the highest character, short, as I say, of homicide. There is no doubt that the directors and officers of railroad companies were entirely justified in refusing to take the hazard that would fall upon them (and their employees, if they acted under their advice) by taking any steps to save the stockholders from the consequences of these laws.

I agree with counsel for the defendants that these matters must be considered separately. For instance, the order of the Commissioners of September 6, 1906, which went into effect on November 15th of the same year, must be considered by itself upon the charge that it did not afford adequate compensation to the railroad com-

panies and had the effect of confiscating their property. If it did not have that effect it would not have that effect if the subsequent acts added to it had that effect. And so with the act of April 4th—the passenger act. If that did not reduce the revenues of the companies to a degree which would leave them without sufficient compensation, even after the reducing effect of the order of the commissioners, then that would not be unconstitutional, it would be constitutional and proper. And the same remarks would apply to the act of April 18, which affected the rates chargeable upon commodities. It would have to be considered, of course, with reference to the reductions theretofore made by the two previous acts; but if that still left enough to compensate the railway companies for their services rendered in the transportation, and left an adequate return upon the value of the property which was used in the transportation within the state, the complainants would have no cause for complaint. But of course the latter act must be considered with
reference to the reductions made in the earlier order and the
687 earlier act. Now, I will not attempt—it would be impossible that I should do so—to go through with the different estimates that have been made in respect to the expenses of the railroads in the transportation of freight and passengers, state and interstate, and what is applicable to the state properly.

It is argued that this court has not jurisdiction of the case because it does not raise any federal question, for the reason that there is no controversy as to the effect of the constitutional provision in the fourteenth amendment, that I have referred to, because it is admitted on the part of the defense that the construction claimed for that provision by the complainants is the true construction and that there is no controversy in relation to it, and that the only controversy arising upon this hearing is in relation to matters of fact alone. With respect to that, I might say that there is not really any controversy in respect to matters of fact, until we come to the ultimate facts in the case. There is no controversy as to what the order of the Railroad and Warehouse Commission actually was; there is no controversy as to the terms of that order or its effect upon the different articles of merchandise in respect to which it fixes the rates; there is no controversy in relation to the purport of the two different acts of the legislature to which I have referred; there is no controversy with respect to the showing which has been made by the railroad companies as to the cost of transportation, their operating expenses in the past, and the anticipated increase in those expenses in the present year; nor is there any controversy with respect to the amount invested in these railroad properties, in the first place,—there has been no attempt to show that they are different from what they are claimed to be in the showing
made by the railroad companies themselves; nor with respect
688 to the fixed charges, which are encumbrances upon these different properties, nor with respect to the amount of stock outstanding in these different companies. In relation to some of them, (the Chicago Great Western in particular) I believe that the evidence is that there are no outstanding bonds—anything which is usually reckoned by railroad companies as among their fixed charges; but it does appear that there are outstanding debentures, and that

there are classes of preferred stock—several of them, each class in its order being allowed a certain amount of dividend before the next class in order would be entitled to any, and so on until we come to the common stock. And I am inclined to think that debentures of that kind, and preferred stock, which is entitled to dividends before anything goes to the common stock, are very much of the same nature as bonds or securities—which would be entitled to the payment of interest upon them before there would be any dividends on the preferred or common stock; that they are very much of the same character as these others which are reckoned under the head of fixed charges.

Now, the showings by the different railroad companies amount to this: That in the years past, including the year 1906, there was not enough revenue from the business carried on within the state, including business that was entirely local to the state and the share of the interstate business which would properly be chargeable to or applied upon the property of the railroad companies within the state, to entirely pay the fixed charges outstanding and afford any adequate dividend or compensation to the owners of the stock itself—which represents the property—after paying all the operating expenses.

And the showing was, in some cases, that there were no
689 charges made, in the keeping of the accounts, under the head of or for or on account of depreciation in the road or rolling stock—the property of the company. It is evident that there ought to be a proper account under that head; that a railroad, like everything else, will wear out in time; and they have been used so long in this country that there can be a reasonable estimate of the percentage of loss each year from depreciation of the roadbed, culverts, bridges, rolling stock; and that it would be proper to lay aside a reasonable amount to furnish replacements, renewals and repairs when needed, and that if that was not done the railroad company might soon be in a position in which it could not keep up, with the receipts that it was getting, and maintain its property in an efficient state to render such service as the public is entitled to receive from it. Now this is a matter in which the public has an interest, as well as the railroad companies and the stockholders of the railroad companies. Some of us older men can remember, in the early days, about the time when the state was admitted, the great anxiety that the people of the state had at that time that railroads should be brought into the state; that persons having capital should be induced to bring railroads into the state; that it was necessary for the prosperity and the upbuilding of the state that it should have railroad connections with the rest of the world; and that great and successful efforts were made to get large subsidies, in the way of land grants, from congress; and that almost every community in the state, every village that had hopes of getting a railroad to it, counties, and all the municipalities were ready to vote, and did vote, bonds as subsidies, for the purpose of inducing men with capital to come into the state and build railroads. They could foresee that it was necessary for the

advancement and prosperity of the state, to bring emigrants
690 and others into the state, and change what at that time was a large waste into the sites of prosperous cities, thriving towns

and villages and farms, and therefore to have railroads built giving them connection with the rest of the world; that there should be a way to take farm products, grain, cattle, hogs, everything that was produced by the farmer, in the quickest manner to the best market, and to bring into the state commodities that were needed by its people. And that was done. Railroads were built. We have them. We see the effect of the railroads. And I think every one will admit that no institutions that we have had in the state have done so much to bring about the present state of prosperity, upbuild cities and cover the state with prosperous farms and with a large population, as the railroads. And it would certainly be a very great calamity if these railroads were dealt with in such a way as to destroy their efficiency and usefulness to the inhabitants of the state. But notwithstanding this, there is, of course, a danger that the mass of the people, looking upon these large aggregations of wealth, seeing occasionally a person who is reputed to be or who has become wealthy on account of his connection with these railroads, and that they are getting considerable amounts of money from the people of the state as compensation for the services that they are performing, will manifest a disposition to reduce this compensation; to save to the people a certain amount of what they have to pay when they patronize the railroads as passengers, or have commodities of any kind to ship upon the railroads. It is quite natural that they should want to have those charges reduced to the lowest point, at any rate, which would be consistent with keeping up the efficiency of the railroads and the advantages which they are receiving from them. There is a danger that this
691 feeling of selfishness may lead them too far, and reduce this compensation so much that it will not enable the railroads to serve them with efficiency—to keep up their roadbed, culverts, bridges and everything so that they will be entirely safe for the transportation of passengers and freight, and to keep the rolling stock in the best state of efficiency, and enable them to provide the best service attainable. And that is exactly what those corporations are required to do; they are required to exercise the highest degree of care in relation to the transportation of passengers, and a high degree of care in relation to the transportation of freight, and it is certainly for the interests of the people that they should be enabled to do this; and it would be a very short-sighted policy which would reduce the compensation of these railroads to a degree that would disable them from performing these services fully and fairly for the benefit of the people.

A question has been raised in the case that these rates fixed by the Railroad and Warehouse Commission and by the legislature trench upon the authority of congress under the commerce clause of the constitution, which gives to congress the entire control and regulation of commerce among the states and with foreign nations and the Indian tribes. There is no question made that this is an exclusive power and that no state has any right to trench upon it in the least, and the decisions of the supreme court have been quite frequently to the same effect. In the Eubank case, and in the case of the transportation from St. Louis to Texas (I do not remember the title), where the legislature provided that the shipper could not recover

any greater amount than was stated upon the bill of lading, and where, after the bill of lading had been issued, the Interstate Commerce Commission, or some persons acting through its au-
692 thority, raised the rate, and the railroad company collected the rate, which was above the amount named in the bill of lading, the supreme court held that an act of that kind by the legislature was matter affecting interstate commerce and not within the power of the legislature to enact. There were several of those decisions referred to on this hearing.

It is claimed on the part of the complainants that these regulations of rates in this state, passenger and freight, do interfere with interstate commerce, and instances have been cited as to their effect upon transportation between, we will say, the Twin Cities, and points on the border line of North Dakota; a comparison between the rates which the state has fixed, which would govern as between these cities and Moorhead, and rates which would govern transportation across the river to Fargo. And it has certainly been very persuasively argued that these rates, fixed by the Minnesota legislature in relation to transportation in Minnesota alone, do of themselves necessarily interfere with interstate commerce, and, under the provisions of the Hepburn law, prohibiting discrimination in respect to localities similarly situated, it is claimed that if the railroad companies themselves, without authority of the state, should fix the present rates between these cities and Moorhead and the interstate rates now existing between these cities and Fargo (and the same with Grand Forks and other places) that they would be liable to prosecution for discrimination. And it would seem to be very difficult to avoid that conclusion, and the conclusion that these rates fixed in respect to Minnesota do necessarily and directly affect interstate commerce. But on the other hand, we have decisions of the Supreme Court, going back at least as far as the case of Munn vs. Illinois in the 94th, U. S.
693 and the Granger cases in the same volume, and repeated by very many decisions since and up to the present time (the last one being what may perhaps be termed the dictum of Mr. Justice White in the case which was decided only on the 19th of April last), to the effect that the state has the right to fix rates in respect to local business within the state; that each state has that right. That has been, as I say, decided over and over again by the supreme court. And as it is a fact that if these rates fixed by the Minnesota legislature do interfere with interstate commerce, it is not simply the rates between here and Moorhead which interfere with it, but it would be as well the rates fixed to any point near the borders of the state; the rates in the state to Willmar, or Detroit, or Crookston, would, in the same way, to a lesser degree, interfere with the interstate rates that existed prior to that time between these cities and points in North Dakota. A holding that they did so interfere and for that reason are unconstitutional, if held at all, would apply, it would seem to me, to these rates entirely throughout the state. The state is bordered on all sides by other states, and I do not think it can be held that the rates simply to Moorhead might be unconstitutional and the rest of them constitutional. But in view of the decisions of the supreme court, to which I have referred, and which have been so

continually adhered to down to the present time, it seems to me it would be very improper that I should attempt, on this preliminary hearing in this case, to make a holding entirely contrary to those holdings of the supreme court. I should hesitate very much before doing so. Although I do not think I ordinarily hesitate in any case to rule as I deem to be correct according to law, I certainly do pause before holding that these rates are not within the power of the legislature, if they are fairly compensatory.

694 I have no doubt that congress might very properly, under the constitutional provision giving it the entire power of control over interstate commerce, assume control of the avenues of interstate commerce—of the railroads which are engaged in interstate commerce, and of all rates which are collected by those railroads, whether within the states or without the states; because the matter of those rates would affect these avenues of interstate commerce, might affect their ability to continue as avenues of interstate commerce. The rates if they were fixed by the states might be fixed so low in one state, and another, and all of them, that the railroads could not exist and could not perform their functions as carriers of interstate commerce; and for the purpose of securing these railroads as carriers of interstate commerce, congress would have the power under that provision, to take the entire control of the regulation and the rates which the carriers of interstate commerce, upon the avenues of interstate commerce, would have the right to charge, the same as congress has assumed the right, under the very same clause, to control the navigation of the coastwise waters, bays and lakes, and the rivers running through the country—even if the rivers are entirely within a particular state. They have as much control of the Mississippi River above the Falls of St. Anthony as they have between St. Louis and New Orleans; the same control of the Minnesota River, which is entirely within the state—both of which streams have been used for the purpose of navigation within my recollection. On the upper Mississippi, above the falls, there were two lines of steamboats, before the war, for some years; and upon the Minnesota River there were several lines of steamboats, running as far up as Fort Ridgeley, I think; and after congress assumed the control of navigation

695 entirely, it applied this control to those rivers just as much as to rivers that run between states and through several states, and applied it to the bays and inlets on the coasts of the ocean, where there was navigation running from one state to another. The same with the coasts upon the Great Lakes. I think there is no doubt but that matter would be within the control of congress. But, as has been held by the supreme court in many cases, where congress has the power to exercise control, as long as it fails to exercise it the states may exercise control in all matters that are proper—police regulations at any rate. And until congress does exercise that control, and certainly while the supreme court continues to hold, as it has, that the states may regulate the local commerce that is entirely within the state, I do not think it would be proper that I should attempt to hold that these acts are void as invasions of the right of congress to control exclusively the avenues of interstate commerce, although I must confess that the arguments to the effect that these particular

acts of the Minnesota legislature do interfere necessarily and directly, with interstate commerce, are extremely cogent.

Now, with respect to the order of the Railroad and Warehouse Commission which went into effect on the 15th of November last, and which was accepted by the railroad companies, and which they acted under from that time to the commencement of this action, and in respect to the passenger rates, which were fixed by the act of April 4th of the present year, and were accepted by the railroad companies, it is claimed that no preliminary injunction should issue having the effect to stop the operation of that order and that act, and that the office of a preliminary injunction is simply to keep matters in statu quo until the final decision of the case. That
696 is, ordinarily, the effect of a preliminary injunction, and ordinarily it ought not to be extended beyond that. It is true that there may be cases—for instance, where a trustee of property is attempting to put that property in the hands of a third person and to defraud the cestui que trust of the property or of its use or benefit, and where that is made clear, and where it has not gone fully into effect but has partly gone into effect and that is made clear, a preliminary injunction may be made so far mandatory as to require,—where the property has been partly taken away from the hands of a trustee, perhaps by his own fraudulent consent, and the cestui que trust is likely to be deprived of it—that even a preliminary injunction may be made mandatory so far as to require that that property be restored to the hands of the trustee or into such hands as the court may place it, to preserve it for the benefit of the cestui que trust. But that exercise of authority ought not to extend beyond cases where there is actual fraud; where the person receiving the property has no fair claim of right, no fair color of right to the property. If he can show that he has a fair color of right which may be litigated, he ought not to be deprived of an opportunity to preserve the status quo until the matter should be properly determined. Now, in this case, in respect to the rates fixed by the Railroad and Warehouse Commission, it is claimed on behalf of the state—and claimed, no doubt, honestly—that these rates are not confiscatory; that they do afford an adequate compensation for the services rendered, in view of the property which is used in the business, and that they are entirely valid; and the same way with the passenger rates. The state insists—and no doubt entirely in good faith—that these rates are compensatory; that these acts are not confiscatory; that they
697 are not in violation of the constitutional provision in any manner. And it seems to me, under those circumstances, that the preliminary injunction cannot go against the enforcement of the rates fixed by the Commission, nor the passenger rates which have been accepted by the railroads and are in operation. I say this without any reference to the fact that the court would have no right to fix rates if it should be determined to enjoin either of these rates. And this will obviate the necessity, upon this hearing, of determining whether the rates fixed by the Commission, or the passenger rates, together or singly are confiscatory, and do not afford reasonable compensation for the services rendered and a proper allowance with

respect to the property employed. These, I think, need not be considered.

But the act of April 18th, fixing the commodity rates, has not yet gone into effect. It has been restrained by the preliminary order of this court. And if it appears on this hearing that the rates fixed by that commodity act, in view of the lessening of the rates by the Railroad and Warehouse Commission and the lessening of the rates by the act of April 4th, are not sufficient to be compensatory, and are in fact confiscatory, the preliminary injunction ought to go against the putting of those rates into effect. As has been said, the showing in the case is that under the rates that were in effect prior to any of these mentioned going into effect, the amount of compensation received by the railroad companies for the services done within this state, in respect to transportation within the state, of property and persons, was not compensatory; that in the case of the stronger roads, although it came very nearly being compensatory in relation to the others they were far from compensatory. And it was virtually admitted that the effect of the order made by the
698 Railroad and Warehouse Commission was to reduce the amount of compensation which the railroad companies would receive upon the articles that were covered by that order, on merchandise within the state of Minnesota, some 20% to 25% (I think that appeared in the report made by the Railroad and Warehouse Commission to the legislature) and that the effect of the act of April 4th, with respect to passenger rates, cutting the rate from three cents to two cents per mile (which, upon the face of it, would be a cut of 33 1-3%) was in fact, in view of all conditions, actually a cut of about 22% or 23% of the amount which was paid before for like services. It seems to me, upon this evidence of the conditions before either of those new rates were put into effect, and the reductions made by those rates, that if there is added the reduction which is attempted to be made by the commodity act, it will reduce the compensation received by the companies below what would be a fair compensation for the services performed, including an adequate return upon the property invested. And I think, on the whole, that a preliminary injunction should issue, in respect to the rates fixed by Chapter 232, talked of as the commodity rates, and that there should be no preliminary injunction as to the other rates, although the matter as to whether they are compensatory or not is a matter which may be determined in the final determination of the action.

An order will be entered overruling the demurrer in each case.

Endorsed: "Filed Sept. 23, 1907. Henry D. Lang, Clerk."

699 Circuit Court of the United States, District of Minnesota, Third Division.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

Appearance.

The Clerk will enter my appearance for the defendant, Great Northern Railway Company, in the above entitled action.

WM. R. BEGG,
Solicitor for the Great Northern Railway Co.,
Third & Rosabel Sts., St. Paul, Minn.

Endorsement: Appearance of Wm. R. Begg for the Defendant Great Northern Ry. Co. Filed October 5th, 1907. Henry D. Lang, Clerk.

700 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

1907, October 5th.—This day comes the defendant Great Northern Railway Company by Wm. R. Begg, solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.
C. R. "C." page 117.

701 Circuit Court of the United States for the District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,
v.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Answer of Defendant Great Northern Railway Company.

The Defendant Great Northern Railway Company, for answer to the complainants' bill of complaint herein, says:

I.

This defendant admits and avers that to the best of its knowledge, information and belief the allegations of the complainants' bill of complaint herein are, except as hereinafter stated, true.

II.

This defendant avers and says that the value of the railways controlled and operated by it as one connected system exceeds the sum of four hundred fifteen millions of dollars, and that said railways could not at the present time be reproduced for that sum; that this defendant owns practically the entire capital stock
702 of the St. Paul, Minneapolis and Manitoba Railway Company, the Eastern Railway Company of Minnesota, the Duluth, Watertown & Pacific Railway Company, the Willmar & Sioux Falls Railway Company, the Minnesota & Great Northern Railway Company, the Dakota & Great Northern Railway Company, the Brandon, Devils Lake & Southern Railway Company, the Montana & Great Northern Railway Company, the Great Falls & Canada Railway Company, the Spokane Falls & Northern Railway Company, the Washington & Great Northern Railway Company, and the Seattle & Montana Railroad Company, and has guaranteed the payment of the principle and interest of the bonds of said companies; that the total outstanding capital stock of this defendant is $150,000,000 and the total amount of outstanding bonds of said subsidiary companies so guaranteed by this defendant is more than $114,000,000.00; that the railways of all said subsidiary companies except those of the Willmar & Sioux Falls Railway Company, Montana Central Railway Company, Spokane Falls & Northern Railway Company, and Great Falls & Canada Railway Company, are operated by this defendant under leases thereof.

III.

This defendant further avers and says that to the best of its information and belief the adoption by it of the rate of two cents per mile for the transportation of passengers as provided and required in and by said act of April 4th, 1907, in the bill of complaint herein referred to, if applied to the business of this defendant for the year ended June 30th, 1906, would reduce the revenue derived by this defendant from its passenger business local to and wholly within the state of Minnesota more than $485,000.00 for said year, and its revenue derived from interstate passenger business passing into and through the state of Minnesota more than $350,000.00 for said year; that the adoption and enforcement of the rates
703 fixed in and by said order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, if applied to the business of this defendant for the year ended June 30, 1906, would have caused this *to* defendant a loss in its revenues on business local to the State of Minnesota of more than $331,651.00 for said year, and a loss in its revenues on interstate business passing

into and through the State of Minnesota of more than $171,000.00 for said year. That the adoption and enforcement of the rates fixed in and by said order of the Railroad and Warehouse Commission of the State of Minnesota of May 3rd, 1907, set forth and referred to in the bill of complaint, if applied to the business of this defendant for the year ended June 30, 1906, would have caused this defendant a loss in its revenues on business local to the State of Minnesota of more than $1,356.00 for said year, and a loss in its revenues on interstate business passing into and through the State of Minnesota of more than $3,735.00 for said year. That the rates attempted to be fixed in and by the Act of April 18, 1907, referred to and described in the bill of complaint herein would, if adopted by this defendant and applied to its business for the year ended June 30th, 1906, have reduced its revenues from business local to the State of Minnesota for said year more than $202,000.00, and its revenues from interstate business passing into and through the State of Minnesota for said year more than $150,000.00, in addition to the reduction in its revenues caused by the voluntary reduction in its rates made by this defendant as hereinafter stated. That the total loss of revenue which would have resulted from said orders of September 6th, 1906 and May 3rd, 1907, and from said acts
704 of April 4th, 1907 and April 18th, 1907, if applied to the business of this defendant for the year ended June 30th, 1906, on traffic local to the State of Minnesota and on its interstate traffic passing into and through the said state, would have largely exceeded the sum of $1,600,000.00. In addition to the reductions in rates made and attempted to be made in and by said orders and laws, this defendant did in September and October 1906, voluntarily make large reductions in its rates, local to Minnesota, and interstate, on wheat, coal and other commodities, which reductions, if applied to the business of this defendant for the year ended June 30th, 1906, would have reduced this defendant's earnings from business local to Minnesota more than $205,000.00, and its earnings from interstate business passing into and through the State of Minnesota more than $298,285.00.

IV.

This defendant alleges that to the best of its information and belief the rates fixed in and by said orders and laws in said bill of complaint referred to and described, were and are sufficient to adequately compensate this defendant for the service necessary and required to be performed by it in the transportation within the State of Minnesota of the passengers and property named in and affected by said orders and laws, but notwithstanding this belief, by reason of the severe, excessive and immoderate penalties fixed and imposed by said acts of April 4th, 1907, and April 18th, 1907, and by reason of the multiplicity of prosecutions that might be and would be commenced against it for failure to adopt said rates, and the impossibility of establishing in a criminal prosecution the unreasonableness of the rates fixed by said laws and orders, this

defendant determined to and has put into effect all of said
705 rates and charges so fixed by said orders and laws, save and except only the rates fixed in and by said act of April 18th, 1907; and that this defendant would have adopted and put into effect such rates had it not been enjoined by order of this court; all of which matters this defendant is ready and willing to aver, maintain and prove as this honorable Court may direct; and therefore prays that this court enter such decree in the premises as to it shall seem just and proper.

WM. R. BEGG,
Solicitor for Defendant
Great Northern Railway Company.

706 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 7th day of October 1907, at St. Paul, in the County and State aforesaid, before me personally appeared E. Sawyer, who being first duly sworn deposes and says: That he is the Treasurer of the Great Northern Railway Company, the defendant in the foregoing answer; that he has read said answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

E. SAWYER.

Subscribed and sworn to before me this 7th day of October 1907.
EARLE W. McELROY,
Notary Public, Ramsey County, Minnesota.

[NOTARIAL SEAL.]

(My commission expires April 14, 1911.)

Indorsement: Answer of Great Northern Railway Company. Filed October 8th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

707 Circuit Court of the United States, District of Minnesota, Third Division.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM, Defendants.

This repliant, Henry A. James, saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendants above named, Ira B. Mills, Charles F. Staples

and William E. Young, for replication thereunto says that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray- as in and by *their* said bill *they* have already prayed.

HOW, BUTLER & MITCHELL,
ROBERT THORNE,
DE FOREST BROTHERS,
Solicitors for Complainant.

Endorsement: Replication to Answer of Commissioners. Filed November 4th, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

708 Circuit Court of the United States for the District of Minnesota, Third Division.

In Equity.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

I hereby withdraw my appearance as solicitor for defendant, the Great Northern Railway Company, in the above entitled suit, and consent to the substitution of J. D. Armstrong, Esq., as solicitor for said defendant in my place and stead.
Dated January 27, 1910.

WM. R. BEGG.

The Clerk will enter my appearance for the defendant, the Great Northern Railway Company, in the above entitled suit in the place and stead of Wm. R. Begg.

J. D. ARMSTRONG,
Solicitor for Defendant Great Northern Railway Company, Great Northern Railway Bldg., St. Paul, Minnesota.

709 Due service of a copy of the above notices withdrawing the appearance heretofore entered by Wm. R. Begg, Esq., as

solicitor for the defendant, the Great Northern Railway Company, and substituting J. D. Armstrong, Esq., as solicitor in his place and stead, is hereby admitted this 31st day of January 1910.

HOW, BUTLER & MITCHELL,
HALE HOLDEN,
DE FOREST BROS.,
Solicitors for Complainant, St. Paul, Minnesota.

Endorsement: Stipulation for Withdrawal of Wm. R. Begg and Appearance of Jas. D. Armstrong as Solicitor for G. N. Ry. Co. Filed Feb. 5, 1910. Henry D. Lang, Clerk.

710 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1909.

FEBRUARY 5TH, 1910.

Saturday morning.—Court opened pursuant to adjournment. Present: Hon. Charles A. Willard, Judge; Henry D. Lang, Clerk.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNESS, and S. S. GLARUM.

I hereby withdraw my appearance as solicitor for defendant, The Great Northern Railway Company, in the above entitled suit, and consent to the substitution of J. D. Armstrong, Esq., as solicitor for said defendant in my place and stead.

Dated January 27, 1910.

WM. R. BEGG.

The Clerk will enter my appearance for the defendant, the Great Northern Railway Company, in the above entitled suit in the place and stead of Wm. R. Begg.

J. D. ARMSTRONG,
Solicitor for Defendant Great Northern Railway Company.

Due service of a copy of the above notice withdrawing the appearance heretofore entered by Wm. R. Begg, Esq., as solicitor for the defendant the Great Northern Railway Company, and substituting J. D. Armstrong, Esq., as solicitor in his place and stead, is hereby admitted this 31st day of January 1910.

HOW, BUTLER & MITCHELL,
HALE HOLDEN,
DE FOREST BROS.,
Solicitors for Complainant, St. Paul, Minnesota.

In accordance with the foregoing withdrawal of Mr. Wm. R. Begg, solicitor of record for the defendant Great Northern Railway Company, as its solicitor in this cause, his consent to the substitution of J. D. Armstrong in his place and stead and the appearance of the said J. D. Armstrong, it is by the Court Ordered that the appearance of the said J. D. Armstrong be and the same hereby is entered as solicitor for the defendant Great Northern Railway Company in the place and stead of Wm. R. Begg.

* * * * * * *

A true Record.
Attest:
HENRY D. LANG, *Clerk.*

711 Circuit Court of the United States, District of Minnesota, Third Division.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY Co. et al.

Appearance.

The Clerk will enter my appearance for the defendants George T. Simpson and Charles E. Elmquist, substituted as defendants in the above suit in place of Edward T. Young and William E. Young.

GEORGE T. SIMPSON.
EDWARD T. YOUNG.
C. LOUIS WEEKS.

Endorsement: Appearance of Geo. T. Simpson, et al., as Solicitors for certain Defendants. Filed Feb. 15, 1910. Henry D. Lang, Clerk.

712 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910.

No. 858. Equity.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Motion.

MAY 2ND, 1911.

Now comes the defendant, Great Northern Railway Company, and represents to the court that the preparation of new tariffs to com-

ply with the injunction cannot be completed by the first day of June, the date fixed by the decree, but will necessarily require until on or about the first day of July, A. D. 1911.

Wherefore, defendant moves that the decree be modified by making it effective on the first day of July instead of the first day of June, 1911.

GREAT NORTHERN RAILWAY COMPANY,
By E. C. LINLEY,
R. A. JACKSON AND
J. D. ARMSTRONG, *Its Solicitors.*

St. Paul, Minn., May 2, 1911.

The within motion came on for hearing before the Court on the second day of May, 1911, before the order was entered granting the appeal. The court after hearing counsel for the defendant Railway Company and Edward T. Young and Thomas D. O'Brien, counsel for the other defendants,

Ordered, that the motion be, and the same is hereby, granted.

WALTER H. SANBORN,
U. S. Circuit Judge.

May 2, 1911.

713 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, May–December, A. D. 1910, May 2nd, 1911.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

Equity. No. 870.

HENRY A. JAMES
VS.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

Equity. No. 862.

WILLIAM SHILLABER
VS.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young).

Consolidated.

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Hale Holden, appearing on behalf of all the complainants, Mr. Charles W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, Messrs. E. C. Linley, R. A. Jackson appearing on behalf of the Great Northern Railway Company and George W. Seevers, appear-
714 ing on behalf of the defendant Minneapolis & St. Louis Railway Company, Messrs. Edward T. Young and Thomas D. O'Brien appearing on behalf of all the other defendants.

Whereupon Mr. Edward T. Young makes application to the Court to be allowed to file an appeal in each of the above entitled causes and presents a bond for costs in the sum of Five Hundred Dollars ($500.00), in each cause, and moves the Court to have the injunctive portion of the decrees suspended until the further order of this Court, or until the coming down of a Mandate from the Supreme Court of the United States.

Mr. Pierce Butler argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the complainants.

Mr. Charles W. Bunn argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the Northern Pacific Railway Company.

Mr. Edward T. Young replies and argues further for the allowance of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the other defendants.

Mr. Hale Holden argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the Decrees on behalf of the complainants.

Mr. Thomas D. O'Brien argues in reply and conclusion for the allowance of the appeal and suspension of the injunctive portion of the decrees on behalf of the other defendants.

Whereupon, after hearing the arguments and statements of the solicitors for the respective parties hereto and being fully advised in the premises, upon due consideration thereof, it is by the Court ordered that said appeals be allowed and the bonds in the sum of Five Hundred Dollars each, in each case be and they hereby are approved, and that the motion to suspend the injunctive portion of the Decrees be and the same hereby is denied.

715 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

Consolidated.

Stipulation.

In accordance with the stipulation entered into and made of record in open Court during the argument of this cause, before Hon. Walter H. Sanborn, Circuit Judge, reading "that the annual reports made by the three railway companies involved in these cases to the State of Minnesota for the years 1907, 1908 and 1909, may be transcribed and filed and made a part of the record in the case", it is

Agreed that the abridged copies of the reports of the Great Northern Railway Company to the State of Minnesota for said years herewith deposited with the Clerk, may be filed as full com-

716 pliance with said stipulation, and in lieu of the entire reports of said Company for said years. Those portions of said re-

ports omitted are agreed to be immaterial to any of the issued involved in this case.

Dated April 27, 1911.

E. T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Defendants, Simpson, Staples, Mills, Elmquist, et al.

JARED HOW,
PIERCE BUTLER,
HALE HOLDEN,
Solicitors for Complainants.

717 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910, May 2nd, 1911.

No. 858. Equity.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock,

VS.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

Equity. No. 870.

HENRY A. JAMES

VS.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Pal-, L. Larson, Tom Gunness and S. S. Glarum.

Consolidated.

Order.

Upon reading the stipulation of the parties to this cause this day filed,

It is ordered, That the abridged copies of the reports of the Great Northern Railway Company to the State of Minnesota for the years 1907, 1908, and 1909, deposited with the Clerk of this Court, be filed and make a part of the record in this cause in accordance with the stipulation of the parties entered into in open Court

during the final argument of this cause, and in lieu of complete copies of said reports.

Dated May 2, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

The abridged copies of the reports for the years 1907, 1908 and 1909 referred to in the foregoing Stipulation and Order are returned with this return, but are certified separately.

718 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

To the Above Named Complainant:

Please take notice that on the Second day of May, 1911, at two o'clock P. M. at the District Court Room in the Federal Building, in the City of St. Paul, Minnesota, the undersigned defendants will apply to Honorable Walter H. Sanborn, Judge of said Court, for allowance of an appeal from the judgment and decree in the above entitled action entered on the 8th day of April, 1911, and at the same time and place the undersigned defendants will ask that
719 an order be entered in said cause postponing the taking effect of the injunctional part of said decree so far as Chapter 97 of the General Laws of Minnesota for 1907 and the orders of the Railroad and Warehouse Commission prescribing class rates, as particularly referred to in the complaint, are concerned, until the further order of this Court or of the Supreme Court of the United States.

Respectfully,

GEORGE T. SIMPSON,
IRA B. MILLS,
CHARLES F. STAPLES, AND
CHARLES E. ELMQUIST,
By EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Their Solicitors.

(Endorsed:) Notice of Petition to Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

720 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors Respectively of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Plam, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

To Great Northern Railway Company, John Palm, and L. Larson:

You, and each of you, being named as defendants in the above entitled cause and having appeared therein, are hereby notified that George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, who are also defendants therein, propose to appeal to the Supreme Court of the United States from the judgment and decree of the above named Circuit Court entered therein on April
721 8, 1911, and that they will on the 2nd day of May, 1911, at two o'clock P. M. present to the Honorable Walter H. Sanborn, Circuit Judge, at the District Court Room in the Federal Building in the City of St. Paul, Ramsey County, Minnesota, their petition to have their said appeal allowed. That at the same time and place the Honorable, the said Walter H. Sanborn, will be requested by said petitioning defendants to fix the amount of the bond on the appeal to be required of them.

And the above named George T. Simpson, Ira B. Mills, Charles E. Staples and Charles E. Elmquist hereby request and demand that you join with them in the taking of said appeal to the Supreme Court.

Very respectfully,

GEORGE T. SIMPSON,
IRA B. MILLS,
CHARLES F. STAPLES AND
CHARLES E. ELMQUIST,
By EDWARD T. YOUNG,
THOMAS D. O'BRIEN.
Their Solicitors.

(Endorsed:) Notice to Join in Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

722 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors Respectively of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

Now come the above named defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist and allege that they are advised and verily believe that they are aggrieved by the decree made and entered in said cause on the 8th day of April, 1911, adjudging and decreeing that the legislative acts and orders of the Railroad & Warehouse Commission of the State of Minnesota involved in said cause are, and each of them is, void and of no
723 effect and violative of the constitution of the United States and adjudging and decreeing that these defendants be permanently enjoined and restrained from any attempt to compel the observance and operation of the rates and charges prescribed by said legislative acts and orders of said Commission, and thereupon have appealed from said decree to the Supreme Court of the United States of America.

That these defendants heretofore demanded of the other defendants named in this cause who have appeared therein that they join in this appeal and duly notified each of said other defendants of the time and place where this petition would be presented, as more fully appears from said original notice and proof of service thereof, which is herewith presented and filed in this court.

Therefore, these defendants pray that said appeal be allowed and that a transcript of the records, proceedings and papers upon which said order was based and made be duly authenticated and

transmitted to said Supreme Court of the United States, and with this, their petition for the allowance of said appeal, these defendants, said petitioners, do hereby file an assignment of errors which they will assert, rely upon and urge in support of their said appeal in said Supreme Court of the United States.

And your petitioners further pray that upon the allowance of this appeal said decree so appealed from and its operation be suspended until the further order of this Court or until the order of said Supreme Court of the United States.

Your petitioners herewith present a bond of appeal in the sum of Five Hundred ($500) Dollars duly executed upon their behalf which they pray be approved of, and your petitioners will ever pray.

EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Petitioners.

(Endorsed:) Petition for Allowance of Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

724 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors Respectively of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, Jolm Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

Order Allowing Appeal.

On this Second day of May, 1911, at two o'clock P. M. the above named defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist presented to the Court a joint petition asking for the allowance of an appeal to the Supreme Court of the United

States from the judgment and decree entered in said action in this Court on the 8th day of April, 1911, and also asking that until the further order of this Court, or of the Supreme Court of the
725 United States, the injunctional part of said decree be suspended as to the *the* class and passenger rates involved in this litigation. It was made to appear that a notice of the time and place of the presentation of this application had been duly served upon the counsel for complainant, and upon counsel for all the other defendants who had appeared in said action. Edward T. Young and Thomas D. O'Brien appeared as counsel for petitioning defendants; Messrs. How, Butler & Mitchell and Hale Holden appeared as counsel for said complainant; R. A. Jackson appeared as counsel for defendant Great Northern Railway Company, and no other of the parties appeared. After hearing counsel both upon the question of allowing said appeal and suspending the effect of said decree during the pendency of said appeal:

It is ordered That said appeal be and the same is hereby allowed as prayed in said petition and the bond upon said appeal conditioned for the payment of the costs thereof in the sum of Five Hundred ($500) Dollars is approved.

It is further ordered That the application of said appealing defendants for a suspension of the injunctional part of the decree heretofore entered herein be and the same is hereby denied.

Dated at St. Paul, Minnesota, this Second day of May, A. D. 1911.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order Allowing Appeal. Filed May 4, 1911 Louise B. Trott, Clerk.

726 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE P. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

727 *Assignments of Error.*

Now come the above named defendants George T. Simpson Ira B. Mills, Charles F. Staples and Charles E. Elmquist, and say there is manifest error in the record of the proceedings and in the decree in the above entitled cause in this, to-wit:

Said Court erred in finding and decreeing

"That the acts of the Legislature of the State of Minnesota, approved April 4, 1907, and April 18, 1907, respectively, and each of them and the orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and May 3, 1907, respectively, and each of them recited in the bill of complaint, operate as a burden upon and in interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the defendant Northern Pacific Railway Company."

The foregoing part of the decree rests upon certain erroneous findings of fact and conclusions of law made by the Master and upheld by the Court, in each and every one of which there is manifest error in the following particulars, to-wit:

a. The Court erred in ignoring the fact that commerce was divided into the two distinct classes of interstate and intrastate, by the commerce clause of the Federal Constitution, whereby the power to regulate the former class was conferred upon Congress, the power to regulate the latter being left in the states.

b. The Court erred in assuming that the respective constitutional powers of the states and the Nation over commerce can be en-
728 larged or contracted by the similarity or dissimilarity of the conditions affecting interstate and intrastate commerce in any group of adjacent states.

c. The Court erred in holding that interstate rates are presumed to be reasonable simply because the schedules — filed by the carrier with the interstate commerce commission, and that the power of the state to regulate its internal commerce can be exercised only to the extent of making intrastate rates harmonize with interstate rates in the same field whether the interstate rates are reasonable in fact or not.

d. The Court erred in holding that there is any legal relation between interstate and intrastate rates except that arising out of the requirement that when rates are fixed on either class by the sovereignty having control thereof such rates must be reasonable in and of themselves without regard to the earnings of the carriers on the other class.

e. The Court erred in holding that conditions affecting interstate and intrastate business were similar and that the rates on the two constitutional classes were relatively fair and equal in the territory comprising Wisconsin, Minnesota, North & South Dakota, before the rates here involved were prescribed, first because such

finding is immaterial in determining the governmental power of this state, and secondly because such findings are not supported by, but are contrary to the evidence.

729 *f.* The Court erred in holding that the provisions of the interstate commerce act forbidding discrimination between localities in interstate commerce is violated when intrastate rates to a given point differ from interstate rates for practically equal distances to the same point, though the intrastate rates may be fair and reasonable in and of themselves and the interstate rates may be in fact unfair and unreasonable in and of themselves.

g. The Court erred in disregarding the proof of peculiar conditions in the way of home markets which distinguish the internal commerce of Minnesota from the intrastate commerce of adjacent states.

h. The Court erred in holding the principle upon which the schedules involved were constructed, were erroneous because such schedules were made on exactly the same principle as the distance and terminal tariffs which had been long maintained by the companies themselves, and for the further reason that the making of schedules is a legislative question, the courts being concerned only with the sufficiency of the revenue produced thereby.

730 II.

The Court erred in finding and decreeing "That said legislative acts and orders, are, and each of them is, confiscatory and constitute an attempt to deprive the complainant and the said Railway Company of their and its property without due process of law, and to deny them and it the equal protection of the law, and that each of said acts and orders is violative of the Constitution of the United States, and are, and each of them is, void and of no effect."

The foregoing part of the decree is based upon certain findings of fact and conclusions of law made by the Master, and upheld by the Court, in each of which the Court committed manifest error in the following particulars:

1. The Court erred in finding and decreeing that the value of railroad property employed in the public service is to be determined solely by estimating the cost of reproducing the same.

2. The Court erred in holding and basing its findings of value upon an estimate of the cost of reproduction which left out of consideration the conditions and circumstances under which the rights of the railroad company in the lands used by it were originally acquired, the amount originally expended in acquiring such rights, and in constructing and equipping the road, and the amount since expended by the railroad company out of capital in permanent improvements, and the amount expended for such permanent improvements out of earnings.

3. The Court erred in basing its findings of value on an estimate which excluded entirely the character, and the face and market value of the stocks and bonds of the company.

4. The Court erred in basing its findings of fact as to value on an estimate which entirely ignored the character of the railroad as

a public highway, and wholly failed to distinguish between the value of the fee title of the land and the easement therein owned and used by the railroad company.

5. The Court erred in basing its findings of value on an estimate of the cost of reproduction founded entirely upon arbitrary assumptions governed by no fixed or uniform rules.

731 6. The Court erred in basing its findings of value solely upon an estimate of the cost of reproduction which nullifies all the laws against the fictitious capitalization of railroads, capitalizes permanent improvement made out of earnings, and also capitalizes the growth and industrial development of the country by assigning a value to the railroad easement in land, based on present market value of adjacent private property.

7. The Court erred in finding that the value of property devoted to the use of the public can be ascertained by a method based upon the imaginary obliteration and "reproduction" thereof, especially as to rights in land, and in failing to find and hold that the maximum basis upon which a railroad is entitled to a reasonable return over and above the cost of maintenance and operation, is the actual investment made in acquiring its rights in the necessary land, and in constructing and equipping the road, and in making the permanent improvements thereof which were paid for out of capital.

8. The Court erred in finding that the value of a railroad easement in land acquired in the past can be correctly determined by taking the present market value of the fee in adjacent land and increasing it by an arbitrary element called "railroad value" and again increasing this by a fixed multiple of itself to cover the constructive severance damages. The Court also erred in holding that the value of railroad property can be determined upon the many arbitrary bases embodied in the method upheld by it, such as allowances for imaginary contingencies and legal expense, and interest on the cost of the road during an arbitrary and imaginary period of reconstruction.

9. The Court erred in not dismissing the complaint because of the total failure of the complainant to furnish any evidence of the original cost of acquiring constructing or improving any part of the property, and for the total failure of the complainant (as shown by the Master's ninth finding) to furnish any proof of the face or market value of the stocks and bonds which represent the part of the total investment devoted to the public service, separate from the other profit producing property owned by the Company and acquired by the same capitalization.

10. The Court erred in apportioning the value of the property used in the state between passenger and freight business on the gross earnings basis, and apportioning the common cost on the train and engine mileage bases.

11. The Court erred in apportioning the value assigned to the freight and passenger business respectively between interstate and intrastate traffic on the gross earnings basis.

732 12. The Court erred in basing its findings as to the relative cost of handling interstate and intrastate business on

the opinions of witnesses produced by respondent without any proof on behalf of respondent of the actual facts out of which the differences in relative costs arise, after it was shown by appellant- that such relative costs can be accurately ascertained by proper cost accounting.

13. The Court erred in rejecting the evidence given on behalf of appellants as to the relative cost of doing the inter and intra business as shown by data taken from the books of the railroad company.

14. The Court erred in not including in the income of the railroad company all net income derived from other property acquired by the same capitalization and held and used by the company for profit.

15. The Court erred in including in the value of the railroad property cost of reproducing the property of other independent corporations in which the railroad company held stock.

16. The Court erred in finding that the cost of handling intrastate freight business is two and one-half times the cost of handling intrastate freight business and the cost of handling intrastate passenger business is fifteen per cent greater than the cost of handling interstate passenger business, for the reason that such findings are wholly unsupported by and are contrary to, the evidence.

17. The Court erred in failing to require respondent to furnish proof of the total quantity of freight carried on through trains and on local trains respectively over the operating divisions of the road wholly or partly within the state, and the haulage cost of the local trains and the through trains separately, and the respective quantities of interstate and intrastate traffic hauled on said local and through trains, for the purpose of furnishing a basis for determining by computation the relative cost of the inter and intra business, and the Court erred in failing to dismiss the action for failure of complainant to furnish such proof.

18. The Court erred in the matter of determining the difference in the cost of handling interstate and intrastate traffic, in failing to limit the extra cost to the transportation expenses, that being the only grand division of the "cost of operation" in which any difference can exist.

19. The Court erred in refusing to dismiss the case for failure of proof by the complainant as to the actual value of the property employed in the service in the state, and the actual value of the portion thereof employed in intrastate business, and for a total want of proof of the cost of handling such intrastate business or any data from which the same could be deduced.

733 20. The Court erred in holding that the income from the stock of an express company, owned by and operating over the railroad, should not be added to other income for the purpose of determining the adequacy of such total income.

21. The Court erred in holding that the legal presumption of reasonableness in favor of the rates was overcome by the finding of the Master that they were unreasonable.

22. The Court erred in finding that a railroad is entitled to a return of seven per cent net on the value of the property devoted to the public use.

23. The Court erred in holding that, after the railroad company had accepted and put the merchandise rates and the passenger rates into effect they can be enjoined at the suit of this complainant as inadequate without any application by the Railroad Company to the Railroad and Warehouse Commission for increased rates, in violation of the law of the state requiring such application to be made before existing rates can be raised.

24. The Court erred in adjudging that costs should be taxed against these defendants, who were sued herein solely because of their respective official positions and not because of any personal interest, or any act committed or threatened by them as individuals.

25. The Court erred in finding and decreeing that the laws and orders involved are, or that either of them is, void on account of the penalties provided for the violation thereof.

Wherefore said appellants pray, for each of the errors above specified that said judgment and decree be reversed.

EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.

Endorsed: Assignments of Errors and Prayer for Reversal. Filed May 4, 1911. Louise B. Trott, Clerk.

734 United States Circuit Court, District of Minnesota, Third Division.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimo-k, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

Bond on Appeal.

Know all men by these presents, That, we George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, as principals, and the United States Fidelity & Guaranty Company of Baltimore, Maryland, as Surety, are held and firmly bound unto the above named complainant in the sum of Five Hundred ($500) Dollars, lawful money of the United States, for the payment
735 of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this Second day of May, A. D. 1911.

The condition of the above obligation is such, That Whereas, the judgment and decree of said Court was entered in the above entitled action on the 8th day of April, 1911, adjudging that the Acts of the Legislature of the State of Minnesota, approved April 4, 1907, and April 18, 1907 respectively, and each of them, and the Orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, is void and of no effect and enjoining the Great Northern Railway Company, its officers, directors, agents and employees, and each of them, from continuing to observe or keep in force the tariffs fixed by said Orders and Acts, and each of them, and enjoining the said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad & Warehouse Commission of said state from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges described in said Orders and Acts and from taking any action, step or proceeding against said Railway Company or its officers, directors, agents or employees to enforce any fines, penalties or punishments for violation of said Orders and enjoining the said George T. Simpson, as Attorney General aforesaid, from taking any action, step or proceeding against said Railway Company, its officers or directors, agents or employees to enforce the penalties and punishments specified in said Acts and adjudging the cost of said suit against these appellants:

736 And Whereas the above named principals of this bond have appealed from the said judgment and decree to the Supreme Court of the United States.

Now Therefore if said appellants shall prosecute their appeal to effect and if they fail to make their appeal good shall answer and pay all costs, then this obligation to be void, otherwise to remain in full force and effect.

In Testimony Whereof the above named principals have hereunto set their hands and seals, and the said Surety, the United States

Fidelity & Guaranty Company of Baltimore, Maryland, has caused this bond to be executed by its proper officer thereunto duly authorized, the day and year above written.

GEORGE T. SIMPSON. [SEAL.]
IRA B. MILLS. [SEAL.]
CHARLES F. STAPLES. [SEAL.]
CHARLES E. ELMQUIST, [SEAL.]
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]

[Seal U. S. Fidelity & Guaranty Co.]

By CHARLES B. COLEMAN,
Attorney in Fact.

In presence of
THOMAS D. O'BRIEN, *As to Geo. T. Simpson.*
C. F. McNALLY, *As to All.*
A. L. FLINN, *As to Mills, Staples & Elmquist.*

737 STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 3rd day of May, A. D. 1911, personally appeared George T. Simpson to me known to be one of the persons who signed and executed the foregoing bond and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My Commission Expires January 1st, 1915.

STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 4th of May, A. D. 1911, personally appeared Ira B. Mills, Charles F. Staples and Charles E. Elmquist, to me known to be the same persons who signed and executed the foregoing bond and each acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My Commission Expires January 1st, 1915.

738 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 4th day of May, 1911, before me, a Notary Public within and for said County and State, personally appeared Charles B. Coleman, to me personally known, who being by me duly sworn upon oath did say that he is the Agent and Attorney-in-fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Md., created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal

affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Charles B. Coleman did acknowledge that he executed the said instrument as the free act and deed of said Company.

[NOTARIAL SEAL.] EDITH M. COOKE,
Notary Public, Ramsey Co., Minn.

My Commission Expires June 1, 1913.

(Endorsed:) Bond on Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

739 UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit.

Citation.

United States of America to Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Henry A. James, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the District of Minnesota, Third Division, wherein George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist are appellants and you are defendant in error to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Judge of Circuit Court of United States, District of Minnesota this 2nd day of May, A. D. 1911.

WALTER H. SANBORN,
Judge of Circuit Court of the United States, District of Minnesota.

Due Service of the foregoing Citation by Copy at St. Paul, Minnesota is hereby admitted this 2nd day of May, 1911.

HALE HOLDEN,
JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Defendants in Error.

[Endorsed:] Entered. No. 858. Equity. United States Circuit Court, District of Minnesota, 3d Division. Emma B. Kennedy &c. vs. Great Northern Ry. Co. et al., Defendants. Citation. Filed May 4, 1911. Louise B. Trott, Clerk.

740 858—70.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Louise B. Trott, Clerk of said Circuit Court, do hereby certify and return to the Honorable the Supreme Court of the United States, that the foregoing, consisting of — pages, numbered consecutively from — to — inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders, Final Decree and all other proceedings in said cause, (except the printed copies of Testimony, consisting of 3 volumes and one volume of complainants' and one volume of Defendants' Exhibits—also Copies of Abridged Reports to the State of Minnesota for 1907–1908 and 1909—which are certified separately and returned herewith), and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May, A. D. 1911.

[U. S. Circuit Court Seal, Dist. of Minnesota, Third Division.]

LOUISE B. TROTT, *Clerk.*

Endorsed on cover: File No. 22,676. Minnesota C. C. U. S. Term No. 600. George T. Simpson et al., appellants, vs. Emma B. Kennedy, Robert Eliot Tod, Robert W. De Forest, and William Stewart Tod, executrix and executors of the will of John S. Kennedy, deceased, and Henry A. James. Filed May 15th, 1911. File No. 22,676.

COPY OF ABSTRACTS OF REPORTS

TO STATE OF MINNESOTA

BY GREAT NORTHERN RY. CO.

AND OTHER LINES

COMPRISING GREAT NORTHERN SYSTEM

IN MINNESOTA.

1907.

(Endorsed:) Filed May 9th, 1911. Louise B. Trott, Clerk.

ANNUAL REPORT

Of The

EASTERN RAILWAY OF MINNESOTA

To The

RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA

For the Year Ending June 30, 1907

CAPITAL STOCK

DESCRIPTION	Number of shares authorized	Par Value of share	Total Par value authorized	Total Amount issued and outstanding	Dividends declared during year: Rate	Amount
Capital Stock:	160000	100.00	16000000.00	16000000.00	6	960000.00
	160000		16000000.00	16000000.00		960000.00

Manner of payment for capital Stock	Number of shares issued during year	Total Number Shares issued and outstanding	Total Cash Realized	REMARKS
ISSUED FOR CASH:				
	None	110003	11000300.00	
ISSUED FOR Acquisition of the Lake Superior & SouthWestern Ry		49997	4999700.00	
TOTAL		160000	16000000.00	

BLURRED PA

FUNDED DEBT

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

Class of Bonds or Obligation	TITLE: Date of Issue	TITLE: When due	Amount of Authorized Issue	Amount Issued	Amount Outstanding	Cash Realized on Amount Issued	INTEREST: Rate	INTEREST: When Payable	INTEREST: Accrued during YY	INTEREST: Amt Paid during YY
First Mortgage Bonds										
1st Division	Apl 1 1888	Apl 1 1938	5,000,000.00	4,700,000.00	$4,700,000.00	4,456,412.50	6	Apr & Oct.	282,000.00	234,750.00
Northern Division	Apl 1 1888	Apl 1 1948	10,000,000.00	5,000,000.00	5,000,000.00	4,950,000.00	4	Apr & Oct	200,000.00	200,100.00
TOTAL : Mortgage Bonds			20,000,000.00	9,700,000.00	9,700,000.00	9,406,412.50			482,000.00	434,750.00
GRAND TOTAL :			20,000,000.00	9,700,000.00	9,700,000.00	9,406,412.50			482,000.00	434,750.00

RECAPITULATION OF FUNDED DEBT

CLASS OF DEBT	Amount Issued	Amount Outstanding	INTEREST: Amount Accrued during year	INTEREST: Amount paid during year
Mortgage Bonds-Page 19	9700000.00	9700000.000	438000.00	434780.00
TOTAL	9700000.00	9700000.00	438000.00	434780.00

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets Available for payment of Current Liabilities		Current Liabilities accrued to and including June 30, 1907	
ILLS RECEIVABLE	10000.00	Audited Vouchers and Accounts	248234.36
		Wages and Salaries .	1854.37
		Matured Interest Coupons Unpaid (including coupons due July 1)	5150.00
TOTAL-CASH AND CURRENT ASSETS	10000.00	TOTAL-CURRENT LIABILITIES	253238.92
BALANCE-CURRENT LIABILITIES	243238.92		
TOTAL	253238.92	TOTAL -	253238.92

(See General Balance Sheet Page 40)

BLURRED PA

RECAPITULATION

A. For MILEAGE OWNED BY ROAD MAKING THIS REPORT

ACCOUNT	Total Amount Outstanding	Apportionment To Railroads	Apportionment To other Properties-P.13	Amount Per Mile of Line Miles	Amount	REMARKS
CAPITAL STOCK-Page 17	16,000,000.00	16,000,000.00		889.13	29,813.00	
BONDS-Page 19.("Grand Total")	9,700,000.00	9,700,000.00			18,894.00	
	25,700,000.00	25,700,000.00			48,707.00	

COST OF ROAD EQUIPMENT AND PERMANENT IMPROVEMENTS

ITEM	EXPENDITURES DURING YEAR: Included in Operating expenses	EXPENDITURES DURING YEAR: Included in Operating Expenses Charged to Construction of Equipment	Total cost to June 30,1906	Total Cost to June 30,1907
CONSTRUCTION:				
1. Engineering		15873.16		
2. Right of Way and Station Grounds		42577.53		
3. Real Estate		123.15		
4. Grading .		331479.31		
5. Tunnels,				
6. Bridges Trestles and Culverts.		38376.02		
7. Ties		40720.24		
8. Rails		98051.15		
9. Tracks Fastenings		11497.59		
10. Frogs and Switches		15889.86		
11. Ballast		7160.12		
12. Track Laying and Surfacing ,		28671.17		
13. Fencing Right of Way		3484.06		
14. Crossings, Cattle Guards, and Signs		671.06		
15. Interlocking or Signal Apparatus		85404.11		
16. Telegraph Lines,		1287.28		
17. Station Buildings and Fixtures		37.33		
18. Shops, Roundhouses, and Turntables,		3709.49		
19. Shop Machinery and Tools ,		226.27		
20. Water Stations		.48		
21. Fuel Stations,				
22. Grain Elevators				
23. Storage Warehouses		10488.04		
24. Docks and Wharves				
25. Electric-Light Plants,		19648.47		
26. Electric-Motive-Power Plants				
27. Gas-Making Plants				
28. Miscellaneous Structures		27324.24		
31. General Expenses		880.42		
TOTAL CONSTRUCTION		771777.09	22916385.20	23688162.29

Continued.

ITEM	EXPENDITURES DURING YEAR: Included in operating expenses	EXPENDITURES DURING YEAR: Not included in operating expenses: Charged to Construction or Equipt.	Total Cost to June 30,1906	Total Cost to June 30, 1907
EQUIPMENT:				
Locomotives			582398.97	582398.97
Passenger Cars			40596.86	40596.86
Sleeping, Parlor and Dining Cars,			99930.79	99930.79
Baggage, Express and Postal Cars,			13383.66	13383.66
Combination Cars			19853.59	19853.59
Freight Cars,		2450624.56	3826868.42	6277569.98
Other Cars of All Classes .		1056.43	82357.42	83415.85
TOTAL EQUIPMENT		2451682.99	4765485.71	7217168.70
TOTAL CONSTRUCTION P 27		771777.49	22916365.20	23688142.69
GRAND TOTAL CONSTRUCTION,EQUIPMENT Etc		3223460.48	27681850.91	30905311.39
Total Cost Construction,etc Minnesota		702,281.47	Cannot State	Cannot State
TOTAL COST CONSTRUCTION,EQUIPMENT State of Minnesota		702281.47	Cannot state	Cannot State
Cost of Construction per mile of line			46699.29	47081.56
Cost of Equipment per mile of line			9503.22	14264.24
TOTAL COST PER MILE OF LINE			56202.51	61436.10

QUESTION	ANSWER	REMARKS
1.Does the absence of any entry under the heading "Included in Operating Expenses"(Page 29 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts,	NO	This Company 's property being leased to the Great Northern Ry.Co. the cost of any improvements and betterments made to the property during the year and charged to operating expenses would appear in the returns of that Company.

INCOME ACCOUNT

For roads Not Making Operating REPORTS

INCOME FROM LEASE OF ROAD	1295000.00	
		1295000.00
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued-Page 23	435000.00	
TOTAL DEDUCTIONS FROM INCOME,		-435000.00
NET INCOME,		860000.00
DIVIDENDS 8 Per Cent. Stock. -Page 17	860000.00	
TOTAL,		860000.00
SURPLUS on June 30,1906 (From "General Sheet" , 1906 Report)		337940.30
Deductions for Year		229.38
SURPLUS ON JUNE 30,1907.(For entry on "General Balance Sheet",Page 51)		337610.92

STOCKS OWNED
A. Railway STOCKS

NAME	Total Par Value	Rate	Income or Dividend received	VALUATION
Lake Superior Terminal and Transfer Ry.Co.	15700.00			15700.00
Duluth Terminal Ry. Co.	50000.00	(See Report G.N.Ry.Co.)		50000.00
TOTAL	65700.00			65700.00

B. OTHER STOCKS

NONE

GRAND TOTAL A & B	65700.00			65700.00

BONDS OWNED

A. Railway Bonds

NAME	Total Par Value	Rate	Income or Interest received	Valuation
Duluth Terminal Ry. Co.	175000.00	(See Report D.T.Ry.)		175000.00
TOTAL -------	175000.00			175000.00

BLURRED PA

COMPARATIVE GENERAL BALANCE SHEET

June 30, 1906 Item	June 30, 1906 Total	ASSETS	June 30, 1907 Item	June 30, 1907 Total	Year Ending June 30th, 1907 Increase	Year Ending June 30th, 1907 Decrease
22916345.20		Cost of Road-Page 27	$23068147.89		771777.69	
4985483.71		Cost of Equipment P 26	7217168.70		2451685.99	
69700.00		Stocks Owned-Page 27	69700.00			
175000.00		Bonds Owned-Page 28	175000.00			
1913048.99		Other Permanent Invest's	1915048.99			
	29837399.50			32961080.18		
	217080.87	Cash & Current Assets-P.13		10000.80		207080.37
	273404.16	Rental from Great Northern Ry. Co.		273687.50	283.34	
	30328884.03	GRAND TOTAL		$33244767.48	3915853.45	

COMPARATIVE GENERAL BALANCE SHEET
Continued.

June 30, 1906 Item	Total	Liabilities	June 30, 1907 Item	Total	Year Ending June 30.1907 Increase	Decrease
	16000000.00	Capital Stock-Page 17		16000000.00		
	9700000.00	Funded Debt-Page 23		9700000.00		
	459914.97	Current Liabilities-P.23		253238.92		206676.05
	109750.00	Accrued Interest on Funded Debt not yet Payable		109750.00		
	160000.00	Accrued Dividends on Stock not yet payable		160000.00		
	225735.72	Funds for Renewals		225934.12	198.40	
	3113753.04	Advances made to this Company on a/c of Construction		6337213.72	3223460.68	
	327240.30	Profit and Loss-Page 31 (or 33)		327610.92		329.38
	30036394.03	GRAND TOTAL		33944747.68	3214663.65	

MILEAGE

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES

(Single Track)

State or Territory	Line Represented by Capital Stock — Main Line	Total Mileage Owned	New Line constructed during years	RAILS — Iron	RAILS — Steel
MINNESOTA	47072	47072	389		47072
WISCONSIN	2241	2241			2241
TOTAL MILEAGE OWNED (Single Track)	50313	50313			50313.

TAXES AND ASSESSMENTS OF ALL KINDS

A. For reporting Company's Owned and Proprietary Lines

NONE

NOTE

The taxes on Earnings from traffic over lines owned by this Company and assessments upon its property under the terms of lease with Great Northern Ry. Co., referred to on Page 15 of this report are payable by the Great Northern Ry.Co. and will appear in the report of that Company.

A N N U A L R E P O R T

of the

P A R K R A P I D S A N D L E E C H L A K E R Y . C O .

to the

RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1907.

CAPITAL STOCK

Description	Number of Shares authorized	Par Value of Shares	Total Par Value Authorized	Total Amount Issued and outstanding	Dividends declared during YY: Rate	Dividends declared during YY: Amount
Capital Stock	5,000.	100.00	500,000.00	300,000.00	7	25,000.00
TOTAL	5,000		500,000.00	300,000.00		25,000.00

Manner of payment for Capital Stock	Total number shares issued and outstanding	Total Cash Realized	REMARKS
Issued for Cash:	3,000.	300,000.00	
TOTAL	3,000.00	300,000.00	

FUNDED DEBT

MORTGAGE BONDS MISCELLANEOUS OBLIGATION AND INCOME BONDS

CLASS OF BOND OR OBLIGATION	TIME: Date of issue	TIME: When due	Amount of authorized issue	Amount issued	Amount outstanding	Cash Realized on % issued	Interest: Rate	Interest: When payable	Interest: Amount accrued during year	Interest: Amount Paid during year
FIRST MORTGAGE BONDS	May 1 1899	May 1 1919	500,000.00	500,000.00	500,000.00	500,000.00	5	May 1 Nov 1	25,000.00	25,000.00
TOTAL Mortgage Bonds			500,000.00	500,000.00	500,000.00	500,000.00			25,000.00	25,000.00
GRAND TOTAL			500,000.00	500,000.00	500,000.00	500,000.00			25,000.00	25,000.00

RECAPITULATION
OF FUNDED DEBT

CLASS OF DEBT	Amount issued	Amount Outstanding	INTEREST: Amount accrued during year	INTEREST: Amount paid during year
MORTGAGE BONDS-Page 19	500,000.00	500,000.00	25,000.00	25,000.00
TOTAL	500,000.00	500,000.00	25,000.00	25,000.00

CURRENT ASSETS AND LIABILITIES

Cash & Current Assets Available for payment of Current Liabilities		Current Liabilities accrued to and including June 30, 1907	
Due from Solvent Companies and Individuals	11,656.75	Net Traffic Balances due to other Companies	None
TOTAL CASH & CURRENT ASSETS	11,656.75	BALANCE CASH ASSETS	11,656.75
TOTAL	11,656.75	TOTAL	11,656.75

(See General Balance Sheet-Page 49)

BLURRED PA

RECAPITULATION

P.R5

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT

ACCOUNT	APPORTIONMENT		Amount Per Mile of Line		REMARKS
	To Railroads	To Other Properties (Page 11)	MILES	AMOUNT	
Capital Stock-Page 17	$00,000.00	300,000.00	40.04	10,196.00	
B o n d s -Page 19("Grand Total")	500,000.00	500,000.00		10.196.00	
TOTAL	1,000.000.00	1,000,000.00		20,392.00	

ITEM	Expenditures during Year: Included in Operating expenses	Expenditures during Year: Not Included in Operating Expenses Charged to Construction or Equipment.	Total Cost to June 30, 1906	Total Cost to June 30,1907
CONSTRUCTION:				
Engineering,		67.77	32,117.20	32,184.97
Right of Way & Station Grounds		45.21	38,496.45	38,541.71
Real Estate			80.35	80.35
Grading		357.88	299,286.97	299,644.79
Clearing & Grubbing			20,458.93	20,458.93
Bridges,Trestles and Culverts			41,387.24	41,387.24
Ties		942.58	79,986.02	79,928.60
Rails		1279.76	150,991.42	152,271.18
Track Fastenings		279.26	19,987.10	20,266.36
Frogs and Switches		696.65	1,637.69	2,334.35
Ballast)				
Track Laying)		174.47	35,755.02	35,929.49
Fencing Right of Way		83.09	433.07	516.07
Crossings,Cattle Guards & Signs			303.80	303.80
Telegraph Lines			4,597.14	4,597.14
Station Buildings & Fixtures			2,968.44	2,968.44
Shops,Roundhouses and Turntables		785.14	1,145.25	1,930.39
Water Stations		1,084.92	5,934.02	7,018.95
Locomotive & Car Service			12,559.03	12,559.03
Transportation of Men and Materials			32,615.14	32,615.14
Operating Expenses during Construction			3,587.93	3,587.93
Miscellaneous Structures			2,366.61	2,366.61
Interest and Discount			23,857.30	23,857.30
General Expenses			1,329.68	1,329.68
TOTAL CONSTRUCTION		6,414.65	881,362.24	887,776.89

COST OF ROAD EQUIPMENT AND PERMANENT IMPROVEMENTS
Continued

ITEM	Expenditures during Year: Included in Operating Expenses	Expenditures during Year: Not Included in Operating Expenses: Charged to Construction or Equipment	Total Cost to June 30, 1908	Total Cost to June 30,1907
EQUIPMENT: Freight Cars		None	142,109.59	142,109.59
TOTAL EQUIPMENT:			142,109.59	142,109.59
TOTAL CONSTRUCTION-Page 27		6,416.65	881,362.24	887,778.89
GRAND TOTAL CONSTRUCTION,EQUIPMENT,etc..		6,416.65	1,023,471.83	1,029,888.48
TOTAL COST CONSTRUCTION,EQUIPMENT,etc.-MINNESOTA --		6,416.65	1,023,471.83	1,029,888.48
COST OF CONSTRUCTION PER MILE OF LINE.			17,971.32	18,103.14
Cost of EQUIPMENT PER MILE OF LINE			2,897.83	2,897.85
TOTAL COST PER MILE OF LINE			20,870.15	21,000.99
TOTAL COST PER MILE OF LINE-MINNESOTA			20,870.15	21,000.99

QUESTION

1. Does the absence of any entry under the heading "Included in Operating Expenses(Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?

REMARKS

1. This Company's property is lease to the Great Northern Ry. Co. The cost of any improvements and betterments made to the property of this company and charged to Operating expenses would appear in the returns of that Company.

INCOME ACCOUNT

For Roads not making Operating Reports.

INCOME FROM LEASE OF ROAD ,	61,932.48	
		61,932.48
TOTAL INCOME		61,932.48
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued-Page 23	25,000.00	
Interest on Interest-Bearing Current Liabilities,etc.	1,088.68	
TOTAL DEDUCTIONS FROM INCOME		26,088.68
NET INCOME		35,843.80
DIVIDENDS 7 per cent. Stock -Page 17	35,000.00	
TOTAL		35,000.00
Surplus from Operations of Year Ending June 30,1907.		843.80
Surplus on June 30, 1906 (From "General Balance Sheet" 1906 Report)		11,973.40
SURPLUS ON JUNE 30, 1907 (For Entry on "General Balance Sheet" Page 51)		12,817.20

BLURRED PA

COMPARATIVE GENERAL BALANCE SHEET

June 30, 1906 Item	June 30, 1906 TOTAL	ASSETS	June 30,1907 Item	June 30,1907 Total	Year Ending June 30,1907 Increase	Year Ending June 30,1907 Decrease
	881,362.24	Cost of Road-P.27		887,778.89	6,416.65	
	142,109.59	Cost of Equipment-P.29		142,109.59		
	10,812.95	Cash and Current Assets-P 23		11,656.75	843.80	
		Profit and Loss-P.31 or 33				
	1,034,284.78	GRAND TOTAL		1,041,545.23	7,260.45	

COMPARATIVE GENERAL BALANCE SHEET

Continued

June 30,1906 Item	June 30,1906 Total	LIABILITIES	June 30,1907 Item	June 30,1907 Total	Year ending June 30,1907 Increase	Year ending June 30,1907 Decrease
	500,000.00	Capital Stock-P. 17		500,000.00		
	500,000.00	Funded Debt- P. 23		500,000.00		
	4,166.67	Accrued Interest on Funded Debt not yet payable		4,166.67		
	18,144.71	Advances for Construction		24,561.36	6,416.65	
	11,973.40	Profit and Loss-P.31(or 33)		12,817.20	843.80	
	1,034,284.78	GRAND TOTAL		1,041,545.23	7,260.45	

M I L E A G E

C. MILEAGE OF LINE OWNED BY STATES & TERRITORIES (Single Track)

STATE OR TERRITORY	Line represented by Capital Stock — Main Line	Total Mileage Owned	New Line Constructed during year	M I L E S — Iron	M I L E S — Steel
MINNESOTA	49.04	49.04	None		49.04
TOTAL MILEAGE OWNED (Single Track)	49.04	49.04			49.04

TAXES AND ASSESSMENTS OF ALL KINDS

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES

AD VALOREM TAX	SPECIFIC TAX
Paid by the Great Northern Railway Co. and included in the returns of that Company.	

ANNUAL REPORT

of the

WILLMAR AND SIOUX FALLS RAILWAYS CO.

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE OF MINNESOTA

For the Year Ending June 30th, 1907.

CAPITAL STOCK

DESCRIPTION	Number of shares authorized	Par Value of shares	Total Par Value Authorized	Total amount issued and outstanding	Dividends declared during year: Rate	Dividends declared during year: Amount
Capital Stock	100,000	100.00	10,000,000.00	7,000,000.00	7	490,000.00
TOTAL	100,000		10,000,000.00	7,000,000.00		490,000.00

Manner of Payment for Capital Stock	Total number shares issued and outstanding	Total Cash realized	REMARKS.
Issued for Cash:	55,010.	5,501,000.00	
Issued for Construction:	14,990.	1,499,000.00	Applied at this amount upon contract for construction of this Company's railway
TOTAL	70,000.	7,000,000.00	

FUNDED DEBT

MORTGAGE BONDS MISCELLANEOUS OBLIGATIONS & INCOME BONDS

Class of Bond or Obligation	TYPE: Date of issue	TYPE: When due	Amount of authorized issue	Amount issued	Amount outstanding	Cash realized on amount issued	INTEREST: When payable	INTEREST: Amount accrued during yr.	INTEREST: Amount paid during year
First Mortgage Bonds	June 1 1888	June 1 1928	3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00	5 June 1 Dec 1	182,300.00	182,300.00
			Applied at this amount upon contract for construction of this Company's railway and towards purchase of constructed road .						
TOTAL: Mortgage Bonds,			3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00		182,300.00	182,300.00
GRAND TOTAL			3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00		182,300.00	182,300.00

RECAPITULATION OF FUNDED DEBT

CLASS OF DEBT	Amount Issued	Amount Outstanding	INTEREST: Amount accrued during year	INTEREST: Amount paid during year
MORTGAGE BONDS- Page 19	3,646,000.00	3,646,000.00	182,300.00	182,650.00
TOTAL	3,646,000.00	3,646,000.00	182,300.00	182,650.00

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets Available for Payment of Current Liabilities		Current Liabilities Accrued to and including June 30, 1907	
Cash,	49,044.20	Audited Vouchers and Accounts	1,044,097.20
Due from Solvent Companies and Individuals,	86,017.31	Wages and Salaries	84,259.58
		Matured Interest Coupons Unpaid (Incl.Coupons due July 1st)	2,150.00
TOTAL-CASH & CURRENT ASSETS	135,061.51	TOTAL-CURRENT LIABILITIES	1,130,506.78
BALANCE-CURRENT LIABILITIES	1,015,445.27		
TOTAL	1,150,506.78	TOTAL-	1,130,506.78

Materials and Supplies on hand $89,405.26 (See General Balance Sheet-Page 49)

BLURRED PA

R E C A P I T U L A T I O N

A. For Mileage owned by road making this Report

ACCOUNT	Total Amount outstanding	APPORTIONMENT: to Railroads	To other properties P.11	Amount per mile of line: Miles	Amt	REMARKS
CAPITAL STOCK-Page 17	7,000,000.00	4,500,000.00	2,500,000.00	304.25	14,780.00	
B O N D S-Page 19 ("Grand Total")	3,646,000.00	3,646,000.00		"	11,994.00	
TOTAL	10,646,000.00	8,146,000.00	2,500,000.00		26,774.00	

B. For MILEAGE OPERATED by Road making this Report (Trackage Rights Excluded) THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT---P a g e 11

NAME OF ROAD	CAPITAL STOCK	FUNDED DEBT	TOTAL	AMOUNT PER MILE OF LINE: MILES	AMOUNT
WILLMAR and SIOUX FALLS RY.	4,500,000.00	3,646,000.00	8,146,000.00	304.25	24,774.00
SIOUX CITY & WESTERN RY	2,500,000.00		2,500,000.00	129.16	10,581.00
GRAND TOTAL	7,000,000.00	3,646,000.00	10,646,000.00	433.41	24,943.00

ITEM	EXPENDITURES DURING YEAR: Included in Operating Expenses	EXPENDITURES DURING YEAR: Not included in Operating expenses Charged to Construction or equipment	Total Cost to June 30,1906	Total cost to June 30,1907
CONSTRUCTION:				
1.Engineering		269.96	10,050.83	10,314.29
2.Right of Way and Station Grounds		15,223.10	99,283.12	114,506.22
3.Real Estate		30,763.70	8,721.07	39,484.77
4.Grading		6,199.23	121,200.74	127,399.97
5.Tunnels				
6.Bridges,Trestles,and Culverts		7,475.21	160,441.99	167,917.20
7.Ties		7,158.84	8,135.12	15,293.96
8.Rails		3,778.90	146,807.76	150,586.66
Sidings and Yard Extensions			11,513.38	11,513.38
9.Track Fastenings		1,242.63	24,050.79	25,293.42
10.Frogs and Switches		2,403.53	1,584.05	3,987.58
11.Ballast			136,822.38	136,822.38
12.Track Laying and Surfacing		2,245.63	40,866.07	43,111.70
13.Fencing Right of Way		737.34	22,774.84	23,512.18
14.Crossings,Cattle Guards and Signs			9.89	9.89
15.Interlocking or Signal Apparatus			5,700.28	5,700.28
16.Telegraph Lines.				
17.Station Buildings and Fixtures		347.80	26,898.15	27,245.95
18.Shops,Roundhouses, and Turntables			1,368.20	1,368.20
19.Shop Machinery and Tools			2,794.47	2,794.47
20.Water Stations.		44,068.27	9,869.76	53,938.03
21.Fuel Stations			5,704.85	5,704.85
22.Grain Elevators			80,800.00	80,800.00
23.Road built by Contract			4,125,000.00	4,125,000.00
24.Purchase of Constructed Railway			3,848,200.93	3,848,200.93
25.Electric-Light Plants				
26.Electric-Motive-Power Plants				
27.Gas-Making Plants			4.40	4.40
28.Miscellaneous Structures		1,742.62	23,668.44	25,411.06
29.Legal Expenses				
30.Interest and Discount			171,062.50	171,062.50
31.General Expenses			16.86	16.86
TOTAL CONSTRUCTION		123,650.78	9,011,391.33	9,135,042.11

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ITEM	Expenditures During Year: Included in operating expenses	Expenditures During Year: NOT included in operating Expenses — Charged to Construction or equipment	Total Cost to June 30,1906	Total Cost to June 30, 1907
EQUIPMENT:				
Locomotives			$ 31,980.00	31,980.00
Passenger Cars			8,800.00	8,800.00
Sleeping,Parlor and Dining Cars		1,400.00	4,214.68	2,814.68
Baggage,Express and Postal Cars			4,000.00	4,000.00
Combination Cars.		20,446.96	335,438.42	30,598.46
Freight Cars		7,050.00	13,821.47	5,971.47
Other Cars of all Classes				
TOTAL EQUIPMENT		28,896.96	398,424.57	389,527.61
TOTAL CONSTRUCTION-Page 27		122,480.78	9,041,391.33	9,139,040.11
GRAND TOTAL CONSTRUCTION,EQUIPMENT,ETC.		94,783.82	9,399,815.90	9,494,569.72
			29,618.36	30,024.79
			1,276.64	1,181.68
			30,895.04	31,206.47
Cost of Construction per mile of line.			C a n n o t	S t a t e
Cost of Equipment per mile of line.		67,781.23		

Total Cost Construction-State of Minnesota

QUESTION	ANSWER	REMARKS
1.Does the absence of any entry under the heading "Included in Operating Expenses" (Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts ?	1. NO.	The cost of a great many items of permanent improvements and betterments is charged to Operating Expenses but no attempt is made to separate in our accounts the cost of such items from the cost of ordinary maintenance and renewals.

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INCOME ACCOUNT

for Roads Making Operating Reports

GROSS EARNINGS FROM OPERATIONS-Page 25	2,027,611.53	
Less Operating Expenses-----Page 45	1,353,052.01	
INCOME FROM OPERATION		674,559.50
Miscellaneous Income--Page 41	7,049.24	
INCOME FROM OTHER SOURCES		7,049.24
TOTAL INCOME		681,608.74
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued-Page 23	152,300.00	
Taxes--Page 79-A	97,705.86	
Other Deductions(Depreciation)	37,116.26	
TOTAL DEDUCTIONS FROM INCOME		317,121.64
NET INCOME		364,487.10
Dividends 7 per cent Stock-Page 17	490,000.00	
TOTAL		490,000.00
DEFICIT FROM OPERATIONS OF YEAR ENDING June 30,1907		125,512.90
Surplus on June 30,1906 (From "General Balance Sheet" 1906 Report)		376,455.62
SURPLUS ON JUNE 30,1907,(for entry on "General Balance Sheet",Page 51)		250,942.72

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EARNINGS FROM OPERATION-STATE OF MINNESOTA

ITEM	Gross earnings from Business Originating and Terminating in State of Minnesota ACTUAL EARNINGS	Gross Earnings from Interstate Business accruing to State of Minn. divided on straight mileage basis Deductions a/c Repayments,etc	ACTUAL EARNINGS	Total Gross Earnings (including Local and Interstate business accruing to State of Minnesota.
PASSENGER:				
Passenger Revenue .				164,340.26
Less Repayments.				15,956.80
TOTAL PASSENGER REVENUE	80,402.38			7,405.47
Mail				2,785.45
Express				648.66
Extra Baggage and Storage	28.61			
Other Items				
TOTAL PASSENGER EARNINGS	80,430.99			191,212.64
FREIGHT:				
Freight Revenue				
Less Repayments				894,399.58
TOTAL FREIGHT REVENUE	205,210.08			
Stock Yards,				
Elevators,				349.35
Other Items	349.35			894,748.93
TOTAL FREIGHT EARNINGS	205,559.43			
TOTAL PASSENGER AND FREIGHT EARNINGS	285,990.42			1,085,961.57
OTHER EARNINGS FROM OPERATION:				
Switching charges-Balances	134.00			134.00
Rents not otherwise provided for	329.33			329.33
TOTAL OTHER EARNINGS	463.33			463.33
TOTAL GROSS EARNINGS FROM OPERAT ION-STATE OF MINNESOTA (Local & (Interstate)	286,453.75			1,086,424.90
TOTAL GROSS EARNINGS FROM OPERATION ENTIRE LINE				2,037,611.38

The figures entered on this page as "Gross Earnings from Interstate Business accruing to State of Minnesota,Divided on Straight Mileage Basis", have been compiled as indicated by the caption and in accordance with the demands of the Board of Railroad and Warehouse Commissioners, and are given under protest, for the reason that the Company claims that basis does not truthfully reflect the amount earned within the State of Minnesota.

PAGES
ERTICAL IN BOOK

STOCKS OWNED

A. RAILWAY STOCKS

NAME	Total par Value	Rate	Income or Dividend received	VALUATION
Sioux City & Western Ry. Co.	2,500,000.00			2,500,000.00
TOTAL	2,500,000.00			2,500,000.00

B. OTHER STOCKS

NONE

GRAND TOTAL - A & B	2,500,000.00			2,500,000.00

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RENTALS RECEIVED

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS

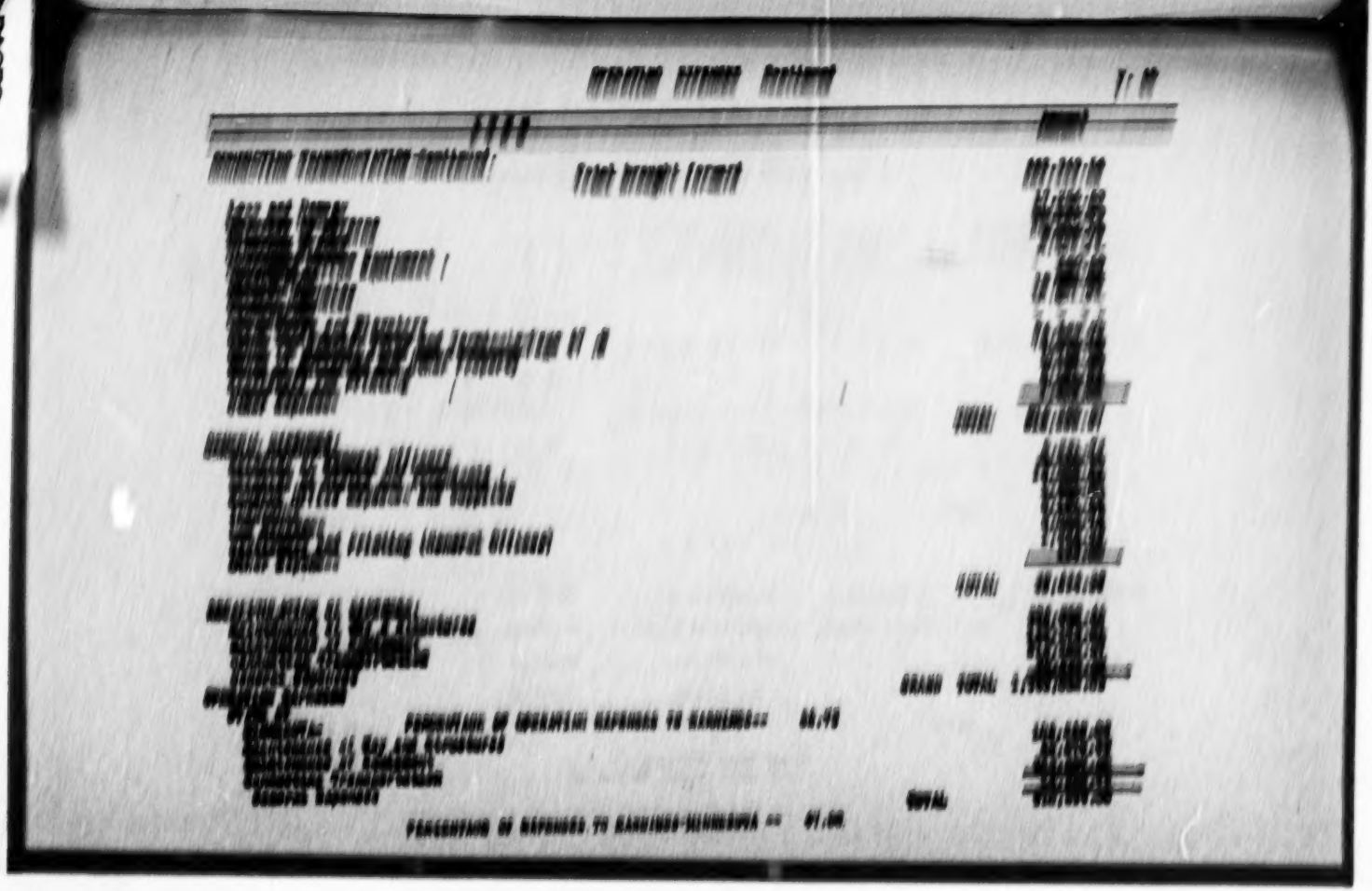
DESIGNATION OF PROPERTY	Situation of property leased	Name of Company using property leased	ITEM	TOTAL
TRACKS: and FACILITIES	Sioux City to Willmar, Minn.	St. Northern Ry.	113.00	
	Sioux City, Ia.	C. B. & Q. Ry.	1,969.50	
TOTAL				2,082.50
				2,082.50

GRAND TOTAL RENTS RECEIVED,
(For entry on Page 35)

MISCELLANEOUS INCOME

ITEM	Gross Income	Expenses	Net Miscellaneous Income
Rental of Equipment & Car Service			6,560.53
Rent of Leaseholds			488.71
TOTAL			7,049.24

ITEM		AMOUNT
MAINTENANCE OF WAY AND STRUCTURES:		
Repairs of Roadway		
Renewals of Rails		
Renewals of Ties		121,772.19
Repairs & Renewals of Bridges and Culverts ,		616.69
Repairs & Renewals of Fences,Road Crossings,Signs, and Cattle Guards		22,593.22
Repairs and Renewals of Buildings and Fixtures		42,010.72
Repairs and Renewals of Docks and Wharves		9,469.41
Repairs and Renewals of Telegraph		36,766.44
Stationery and Print		
Other Expenses		1,880.16
		701.18
MAINTENANCE OF EQUIPMENT:	TOTAL	336,950.40
Superintendence,		
Repairs and Renewals of Locomotives		4,068.13
Repairs and Renewals of Passenger Cars		68,099.87
Repairs and Renewals of Freight Cars		4,147.61
Repairs and Renewals of Work Cars		60,628.07
Repairs and Renewals of Marine Equipment		3,367.11
Repairs and Renewals of Shop Machinery and Tools		
Stationery and Print		418.59
Other Expenses		583.87
		356.99
CONDUCTING TRANSPORTATION:	TOTAL.	144,173.81
Superintendence,		
Engine and Roundhouse Men		
Fuel for Locomotives		28,562.63
Water Supply for Locomotives		97,000.21
Oil,Tallow and Waste for Locomotives		540,692.78
Other Supplies for Locomotives		7,641.99
Train Service		4,801.26
Train Supplies and Expenses ,		2,380.21
Switchmen,Flagmen and Watchmen ,		79,809.44
Telegraph Expenses		11,358.74
Station Service		22,158.70
Station Supplies		27,345.89
		71,963.53
Car Per Diem and Mileage -Balance		7,714.14
Hire of Equipment-Balance ,		31,821.76
		28,415.18
	Total carried forward	962,349.16



RENTALS PAID

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS

Designation of property	Situation of property leased	Name of Company owning property leased	ITEM	TOTAL
TRACKS to Cement Works	Yankton, S.D.	Chi. & No Western Ry	217.26	
	"	Chi. Mil. & St.P. Ry.	291.30	
Facilities	Sioux Falls, S.D.	Illinois Central Ry.	499.50	
	" " "	C.St.P. M. & O.	74.50	
TOTAL				1,182.56
TERMINALS:	Willmar, Minn.	Gt. Northern Ry.	4,800.00	
	Sioux City, Ia.	Combination Bridge Co	18,038.65	
	" "	Union Ter. Co.	40,894.61	
	" "	C.M.& St.P.Ry.	2,876.90	
TOTAL				73,407.16
		GRAND TOTAL RENTS - B (For entry on Page 45, Item 43)		74,589.72

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COMPARATIVE GENERAL BALANCE SHEET

June 30,1906 Item	June 30,1906 Total	ASSETS	June 30, 1907 Item	June 30, 1907 Total	Year ending June 30.1907 Increase	Year ending June 30.1907 Decrease
	9,011,391.33	Cost of Road, Page 27		9,135,042.11	123,650.78	
	328,404.97	Cost of Equipment P28		356,527.61		28,894.96
	2,500,000.00	Stocks Owned, P 37		2,500,000.00		
	100.00	Bonds Owned		100.00		
	83,971.82	Cash & Current Assets-Page 23		135,061.51	51,089.69	
	69,193.91	OTHER ASSETS: Materials & Supplies		69,405.26	211.35	
		Profit and Loss Page 31 (or 33)				
	18,053,061.83	GRAND TOTAL -- $		12,199,136.49	148,056.86	

JUNE 30,1906 Item	Total	LIABILITIES	JUNE 30,1907 Item	Total	Year ending June 30, 1907 Increase	Decrease
	7,000,000.00	Capital Stock-Page 17		7,000,000.00		
	3,646,000.00	Funded Debt-Page 23		3,646,000.00		
	890,481.61	Current Liabilities-Page 22		1,150,906.78	260,015.17	
	15,191.66	Accrued Interest on Funded Debt not yet payable,		15,191.66		
	56,042.45	Taxes not yet Payable		59,533.82	3,490.37	
	68,899.29	Fund for Replacement of Equipment		76,961.51	8,062.22	
	378,455.68	Profit and Loss-Page 21 (or 23)		250,942.72		125,512.96
	12,053,081.69	GRAND TOTAL		12,199,136.49	146,054.86	

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State of Minnesota

ITEM	Column for number Passengers, Tonnage, Car Mileage, Number Cars, etc	Column for Revenue and Rate
PASSENGER TRAFFIC:		
Number of Passengers carried earning revenue	162,096	
Number of Passengers carried one mile	6,260,102	
Number of passengers carried one mile per mile of road miles	46,748	
Average distance carried #	38.62	
Total Passenger REVENUE-Page 35		164,540.36
Average amount received from each Passenger $		1.01508
Average Receipts per Passenger Per Mile $		.03628
Total Passenger EARNINGS-P 35		191,212.64
Passenger EARNINGS per mile of road #		1,427.92
Passenger EARNINGS per train mile $		1.04130
FREIGHT TRAFFIC:		
Number of tons carried of freight earning revenue- Page 35	739,878	
Number of tons carried on e mile,	88,327,929	
Number of tons carried one mile per mile of road	659,607	
Average Distance haul of one ton miles	111.91	
Total freight REVENUE-Page 35		894,599.58
Average amount received for on ton of freight $		1.13318
Average receipts per ton per mile $		.01013
Total freight EARNINGS - Page 35		894,748.93
Freight EARNINGS per mile of road #		6,681.64
Freight EARNINGS per train mile $		7.23563
TOTAL TRAFFIC		1,088,624.90
Gross earnings from operation-Page 35		8,114.5'
Gross earnings from operation per mile of road #		3 J12
Gross earnings from operation, per train mile $		810,659.00
Operating Expenses-Page 45		3,813.45
Operating expenses per mile of road #		1.66367
Operating Expenses per train mile $		575,965.90
Income from operation-Page 31		4,301.14
Income from operation per mile of road #		

Two (2) decimal figures required. $Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS

State of Minnesota
Continued

ITEM	Columns for number Passengers, Tonnage Car Mileage, Number Cars, etc.	Columns for Revenue and rates
CAR MILEAGE ETC.		
Mileage of Passenger cars,	645,528	
Average number of passenger cars per train mile	3.53	
Average number of Passengers per train mile	24.	
Mileage of loaded freight cars-North or East	1,973,175	
Mileage of loaded freight cars-South or West	1,929,703	
Mileage of empty freight cars--Northe or East	564,513	
Mileage of empty freight cars--South or West	304,748	
Average number of freight cars per train mile	38.69	
Average number of loaded cars per train mile	31.65	
Average number of empty cars per train mile	7.04	
Average number of tons of freight per train mile	716.26	
Average number of tons of freight per loaded car mile	22.63	
Average mileage operated during year	131.91	

TRAIN MILEAGE	Miles	Miles
Mileage of revenue passenger trains,	.....	183,628
Mileage of locomotives employed in "helping" passenger trains	124.	... ...
Percentage of "Helping" to revenue train mileage per cent	10	... ...
Mileage of revenue mixed trains	... .	... ...
Mileage of revenue freight trains	... ...	123,318
Mileage of locomotives employed in "helping" mixed & frt trains	6,118	... ...
Percentage of "helping" to revenue train mileage per cent	5	... ...
TOTAL REVENUE TRAIN MILEAGE	... .	306,946
Mileage of nonrevenue trains	.. ..	18,110

TRAFFIC AND MILEAGE STATISTICS

ITEM	Column for number passengers, tonnage, car mileage, number Cars, etc.	Columns for Revenue and rates Dollars & Mills
PASSENGER TRAFFIC:		
Number of passengers carried earning revenue	344,699.	
Number of passengers carried one mile	13,336,376	
Number of passengers carried one mile per mile of road	30,536.	
Average Distance carried# miles	38.68	
Total passenger revenue-Page 35		346,201.13
Average Amount received from each passenger ¢		1.00435
Average Receipts per passenger per mile ¢		.02596
Total Passenger Earnings-Page 35		419,327.21
Passenger earnings per mile of road#		960.15
Passenger Earnings per train mile ¢		.70520
FREIGHT TRAFFIC:		
Number of tons carried of freight earning revenue-P 83	948,729-	
Number of tons carried one mile	145,703,903	
Number of tons carried one mile per mile of road	333,623	
Average distance haul of one ton # miles	154.06	
Total Freight Revenue-Page 35		1,590,733.70
Average amount received for each ton of freight ¢		1.68201
AAverage Receipts per ton per mile ¢		.01091
Total Freight earnings-P.35		1,593,008.22
Freight Earnings per mile of road #		2,647.57
Freight earnings per train mile ¢		3.09734
TOTAL TRAFFIC:		
Gross earnings from Operation-Page 35		2,027,611.53
Gross earnings from operation per mile of road#		4,642.71
Gross earnings from operation per train mile ¢		2.10735
Operating Expenses-Page 45		1,353,052.03
Operating expenses per mile of road#		3,098.14
Operating expenses per train mile ¢		1.40626
Income from Operation-Page 31		674,559.50
Income from operation per mile of road#		1,544.57

TRAFFIC AND MILEAGE STATISTICS

ITEM	Column for Number passengers, tonnage Car Mileage, number cars, etc	Columns for Revenue and rate:
CAR MILEAGE, etc.		
Mileage of Passenger Cars,	1,758,775	
Average number of passenger cars per train mile#	2.96	
Average number of passengers per train mile	23.	
Mileage of loaded freight cars-North or East	3,898,904.	
Mileage of loaded freight cars-South or West,	3,797,696	
Mileage of empty freight cars-North or East	1,181,032	
Mileage of empty freight cars-South or West,	797,221	
Average number of freight cars per train mile#	12.45	
Average number of loaded cars per train mile#	14.97	
Average number of empty cars per train mile #	2.88	
Average number of tons of freight per train mile#	223.21	
Average number of tons of freight per loaded car mile #	19.65	
Average Mileage operated during year#	436.73	
TRAIN MILEAGE:		
Mileage of revenue passenger trains,		447,380
Mileage of locomotives employed in "helping" passenger trains	207	
Percentage of "helping" to revenue train mileage# per cent	.06	
Mileage of revenue mixed trains		146,675
Mileage of revenue freight trains		367,589
Mileage of locomotives employed in "helping" mixed and freight trains	11,365.	
Percentage of "helping" to revenue train mileage # per cent	2.11	
TOTAL REVENUE TRAIN MILEAGE		961,164
Mileage of nonrevenue trains		36,966

Two (2 decimal figures required &Five (5) decimal figures required.

(See foot note next page)

FREIGHT TRAFFIC MOVEMENTS ENTIRE LINE
Company's material excluded.

		Freight originating on this road	Freight road from connecting roads and other carriers	Total Whole tons	Freight Tonnage Per cent
			Cannot give this	448,833	46.82
Products of Agriculture	Grain,			7,363	.76
	Flour			8,876	.91
	Other Mill Products			8,477	.90
	Hay				
	Tobacco				
	Cotton			11,982	1.27
	Fruit and Vegetables			10,884	1.07
	Other Products of Agriculture,			489,313	51.79
	TOTAL--			72,781	7.84
Products of Animals	Live Stock,			3,048	.33
	Dressed Meats			324	.04
	Other Packing-House Products,			48	.01
	Poultry, Game and Fish			1,850	.18
	Hides, Leather and Tallow			80	- - -
	Other Products of Animals			78,079	8.28
	TOTAL--			15,115	2.66
Products of Mines	Anthracite Coal			79,298	8.07
	Bituminous Coal,			881	.09
	Coke			227	.02
	Ores			26,817	2.86
	Stone, Sand and other articles,			2,106	.22
	Other Products of Mines			121,728	12.86
	TOTAL -			182,803	19.34
Products of Forests	Lumber, Lath and Shingles			28,695	3.10
	Other Products of Forests,			102,490	10.87
	TOTAL-			131,185	13.97

(See Foot note)

FREIGHT TRAFFIC MOVEMENT
Company's Material Excluded
CONTINUED

ENTIRE LINE

COMMODITY		TOTAL Freight Tonnage	
		Whole Tons	Per cent
	Petroleum and other Oils		
	Sugar	6,439	.68
	Naval Stores		
	Iron, Pig and Bloom		
	Iron and Steel Rails	4,363	.46
	Other Castings and Machinery.	99	.01
MANU-	Bar and Sheet Metal	3,211	.34
FACTURES	Cement, Brick and Lime	1,464	.15
	Agricultural Implements.	15,182	1.61
	Wagons, Carriages, Tools, etc.	3,451	.37
	Wines, Liquors and Beers	770	.08
	Household Goods and Furniture	1,093	.13
	Other Manufactures	961	.10
		10,142	1.07
	TOTAL-	47,125	4.99
Merchandise		42,092	4.82
Miscellaneous: Other Commodities not mentioned above		25,938	2.72
	TOTAL TONNAGE-	945,725	100.00

NOTE

Cannot give Freight Traffic Movement for State of Minnesota,
Therefore movement for entire line is given.

MILEAGE- STATE OF MINNESOTA

A. MILEAGE OF ROAD OPERATED (All tracks)

LINE IN USE	Line represented by Capital Stock Main Line	Total Mileage Operated	New Line Constructed during year	RAILS Iron & Steel	RAILS Steel
Miles of Single track	133.91	133.91			133.91
Miles of yard track & Sidings	16.47	16.47	1.72	16.47	
TOTAL MILEAGE OPERATED (all Tracks)	150.38	150.38	1.72	16.47	133.91

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single track)

STATE OF MINNESOTA	Line represented by Capital Stock Main Line	Total Mileage Operated	New Line Constructed During year	RAILS STEEL
	133.91	133.91		133.91
TOTAL MILEAGE OPERATED (Single Track)	133.91	133.91		133.91

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track)

STATE OF MINNESOTA	Line represented by Capital Stock Main Line	Total Mileage Owned	New Line Constructed during year	RAILS Iron & Steel	RAILS Steel
	133.91	133.91			133.91
TOTAL MILEAGE OWNED (Single Track)	133.91	133.91			133.91

MILEAGE

A. MILEAGE OF ROAD OPERATED (All tracks)

Line in Use	Line represented by Capital Stock	Line of Proprietary Companies	Line operated under Trackage rights	Total mileage operated	New Line constructed during year	RAILS Iron & Steel	RAILS Steel
	Main Line						
Miles of Single Track	204.25	129.16	3.32	436.73		.07	433.34
Miles of yard Track & Sidings	46.16	9.48		55.64	3.35	55.64	
TOTAL MILEAGE OPERATED All Tracks	250.41	138.64	3.32	492.37	3.35	55.71	433.34

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES

Single Track

State or Territory	Line represented by Capital Stock Main Line	Line of Proprietary companies	Line operated under Trackage rights	Total Mileage operated	RAILS Iron & Steel	RAILS Steel
Minnesota	123.91			123.91		123.91
South Dakota	93.64			93.64		93.64
Iowa	76.70		2.56	79.26		76.70
Nebraska		129.16	.76	129.92	.07	129.69
TOTAL MILEAGE OPERATED (Single Track)	304.25	129.16	3.32	436.73	.07	433.34

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track)

State Or Territory	Line represented by Capital Stock Main Line	Total Mileage Owned	RAILS Steel	Remarks
Minnesota	123.91	123.91	123.91	
South Dakota	93.64	93.64	93.64	
Iowa	76.70	76.70	76.70	
TOTAL MILEAGE OWNED (Single track)	304.25	304.25	304.25	

TAXES AND ASSESSMENTS OF ALL KINDS

A. For Reporting Company's Owned and Proprietary Lines

STATE OR TERRITORY	AD VALOREM TAX On The Value of Real and Personal Property	SPECIFIC TAX On Gross or net Earnings, Revenue or Dividends	TOTAL
MINNESOTA	86.30	43,425.89	43,512.19
SOUTH DAKOTA	13,987.77		13,987.77
IOWA	15,739.81		15,739.81
NEBRASKA	25,465.49		25,465.49
	54,279.37	43,425.89	97,705.26

ANNUAL REPORT

OF THE

MINNEAPOLIS, NORTHERN RAIL CO.

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1904.

BLURRED

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FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

Class of Bond or Obligation	Time		Amount of authorized issue	Amount issued	Amount Outstanding	Cash realized on amount issued.	Interest			
	Date of issue	When due.					Rate	When payable	Amount accrued during year	Amount paid during year
First Mortgage Bonds	July 1 1891	July 1 1911	$500000.00	$500000.00	$500000.00	$500000.00	5	July 1 July 1	25000.00	25150.00
TOTAL: Mortgage Bonds			$500000.00	$500000.00	$500000.00	$500000.00	5		25000.00	25150.00
Miscellaneous obligations,										
Income Bonds,										
GRAND TOTAL			$500000.00	$500000.00	$500000.00	$500000.00			25000.00	25150.00

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RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED	AMOUNT OUTSTANDING	INTEREST: Amount accrued during year.	INTEREST: Amount paid During year.
Mortgage Bonds- Page 19.	500000.00	500000.00	25000.00	25150.00
Miscellaneous Obligations-Page 19				
Income Bonds-Page 19.				
Equipment Trust Obligations-Page 21.				
TOTAL	500000.00	500000.00	25000.00	25150.00

RECEIVER'S CERTIFICATES.

NONE

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets Available for payment of current liabilities		Current liabilities accrued to and including June 30.1907.	
Cash	1236.97	Receiver's Certificates.	
Bills Receivable		Loans and Bills Payable	
Due from Agents		Audited Vouchers and Accounts	18235.76
Due from Solvent Companies and Individuals,	21c61.e6	Wages and Salaries	1946.18
Net Traffic Balances due from other Companies,		Net Traffic Balances due to other Companies	
Other Cash Assets (Excluding "Materials &Supplies") 1		Dividends not called for	
		Matured Interest Coupons Unpaid (including coupons due July 1)	12500.00
		Rents due July 1.	
		Miscellaneous.	
TOTAL-CASH AND CURRENT ASSETS	22298.03	TOTAL CURRENT LIABILITIES	29981.94
BALANCE-CURRENT LIABILITIES	7292.91	BALANCE-CASH ASSETS	
TOTAL	29561.94		29561.94

Materials and Supplies on hand, $1398.00 (See General Balance Sheet-Page 49)

PAGES VERTICAL IN BOOK

COST OF ROAD,EQUIPMENT, AND PERMANENT IMPROVEMENTS- Continued.

RECAPITULATION.

A. For Mileage Owned by Road Making This Report.

ACCOUNT	Total amount outstanding	Appropriated. To railroads	To other Properties. (Page 21)	Amount per Mile of Line. Miles	Amount	REMARKS
Capital Stock- Page 17.	250000.00	250000.00				
Bonds-Page 19 (Grand Total)	500000.00	500000.00		1.69	147929	
Equipment Trust Obligations-Page 21.					295858	
TOTAL	750000.00	750000.00			443787	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (Trackage Rights Excluded)THE OPERATIONS OF UNION ARE INCLUDED IN THE INCOME ACCOUNT, Page 21.

NAME OF ROAD	CAPITAL STOCK	FUNDED DEBT	TOTAL	AMOUNT PER MILE OF LINE. MILES	AMOUNT
Minneapolis Western Ry	250000.00	500000.00	750000.00	1.69	443787
GRAND TOTAL.	250000.00	500000.00	750000.00		443787

BLURRED PAGES

ITEM	Expenditures During Year (Not Included in Operating Expenses.) Included in operating expenses.	Charged to income account as permanent improvements	Charged to special fur	Charged to construction or equipment	Total cost to June 30,1908	Total cost to June 30,1907.
EQUIPMENT						
1. Locomotives				None	12317.38	12317.
2. Passenger Cars,						
3. Sleeping, Parlor, and Dining Cars,						
4. Baggage, Express, and Postal Cars,						
5. Combination Cars,						
6. Freight Cars,						
7. Other Cars of all classes,						
8. Floating Equipment,						
9. Discount and Commission						
TOTAL EQUIPMENT					12317.38	12317.38
TOTAL CONSTRUCTION-Page 27,					739850.10	739850.10
GRAND TOTAL CONSTRUCTION,EQUIPMENT &C.					752167.48	752167.48
TOTAL COST CONSTRUCTION,EQUIPMENT,ETC. - STATE OF MINNESOTA.					752167.48	752167.48
Cost of Construction per mile of line,					437781.13	437781.13
Cost of Equipment per mile of line,					7288.39	7288.39
TOTAL COST PER MILE OF LINE					445069.51	445069.51
TOTAL COST PER MILE OF LINE-MINNESOTA					445069.51	445069.51

QUESTION	ANSWER	REMARKS
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. NO	The Cost of sundry items of permanent improvements and betterments has been charged to Operating Expenses but no attempt has been made to separate, in our accounts, the cost of such items from the cost of ordinary maintenance and renewals.
2. Does the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?		

INCOME ACCOUNT.
(For roads making operating reports)

Gross Earnings from Operation- Page 35	49597.65	
Less Operating Expenses- Page 45,	39242.77	
INCOME FROM OPERATION		10354.88
DEFICIT,		
Dividends on S tocks Owned- Page 37,		
Interest on Bonds Owned- Page 39,		
Miscellaneous Income- Page 41,		
INCOME FROM OTHER SOURCES		
TOTAL INCOME		10354.88
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued- Page 22,	25000.00	
Interest on Interest-bearing Current Liabilities, etc.		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road- Page 47,A,		
Taxes- Page 70,A,	1983.91	
Permanent Improvements- Page 26		
Other Deductions, Depreciation of Equipment	863.22	
TOTAL DEDUCTIONS FROM INCOME,		27846.13
NET INCOME,		
DEFICIT		17491.25
Dividends, Per cent, Common Stock- Page 19,		
Dividends, Per cent, Preferred Stock- Page 17,		
Other Payments from Net Income,		
TOTAL		NONE
Surplus from Operations of Year ending June 30,1907,		
Deficit from Operations of Year ending June 30,1907,		17491.25
Surplus on June 30,1906 (From "General Balance Sheet" 1906 Report)		11104.99
Deficit on June 30,1906 (From "General Balance Sheet" 1906 Report.)		
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30,1907 (For entry on "General Balance Sheet," Page 21)		
DEFICIT ON JUNE 30,1907 (For entry on "General Balance Sheet," Page 21)		6386.26

BLURRED

ITEM	ACTUAL EARNINGS	Total Gross Earnings Including local and Inter-State Business Accruing to State of Minnesota.
PASSENGER:		
Passenger Revenue,		
Less Repayments-		
Tickets Redeemed,		
Excess Fares Refunded,		
Other repayments,		
Total Deductions,	NONE	NONE
TOTAL PASSENGER REVENUE,		
Mail,		
Express,		
Extra Baggage and Storage,		
Other items,		
TOTAL PASSENGER EARNINGS,		
FREIGHT:		
Freight Revenue,		
Less Repayments-		
Overcharge to Shippers,		
Other repayments,		
Total Deductions,		
TOTAL FREIGHT REVENUE,		
Stock Yards,		
Elevators,		
Other items,		
TOTAL FREIGHT EARNINGS,		
TOTAL PASSENGER AND FREIGHT EARNINGS,		
OTHER EARNINGS FROM OPERATION.	48803.65	48803.65
Switching Charges-Balance,	1394.00	1394.00
Other sources	49197.65	49197.65
TOTAL OTHER EARNINGS		
TOTAL GROSS EARNINGS FROM OPERATION-MINNESOTA,	49197.65	49197.65
TOTAL GROSS EARNINGS FROM OPERATION-RAILWAY LINE		

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D PAGES

11 OPERATING EXPENSES 11

ITEM		AMOUNT
MAINTENANCE OF WAY AND STRUCTURES:		
1. Repairs of Roadway		$168.58
2. Renewals of Rails,		13.09
3. Renewals of Ties,		859.63
4 . Repairs and Renewals of Bridges and Culverts,		583.33
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards		
6. Repairs and Renewals of Buildings and Fixtures,		96.69
7. Repairs and Renewals of Docks and Wharves,		
8. Repairs and Renewals of Telegraph,		
10. Other Expenses		
		1196.05
	TOTAL	$4004.17
MAINTENANCE OF EQUIPMENT:		
11. Superintendence,		
12 . Repairs and Renewals of Locomotives		
13. Repairs and Renewals of Passenger Cars,		8915.96
14. Repairs and Renewals ofFreight Cars		
15. Repairs and Renewals of Work Cars,		996.12
16.Repairs and Renewals of Marine Equipment,		
17. Repairs and Renewals of Ship Machinery and Tools,		
18. Stationery and Printing,		
19. Other Expenses,		
	TOTAL	$9920.08
CONDUCTING TRANSPORTATION:		
20. Superintendence,		
21. Engine and Roundhouse Men		
22. Fuel for Locomotives		2024.82
23. Water Supply for Locomotives,		7013.01
24. Oil, Tallow, andWaste for Locomotives,		148.32
25. Other Supplies for Locomotives,		647.44
26. Train Service,		20.93
27. Train Supplies and Expenses,		
28. Switchmen, Flagmen, and Watchmen,		
29. Telegraph Expenses,		6913.28
30. Station Service,		48.00
31. Station Supplies		1906.27
32. Switching Charges-Balance,		107.93
33. Car Per Diem and Mileage-Balance,		
34. Hire of Equipment-Balance		24.25
	Total carried forward	$19849.98

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THIS PAGE BOUND

ITEM		AMOUNT
CONDUCTING TRANSPORTATION- Continued	Total brought forward	$13348.45
35. Loss and Damage,		14.48
36. Injuries to Persons		1325.34
37. Clearing Wrecks		139.10
38. Operating Marine Equipment		
39. Advertising,		
40. ~~Advertising~~ Outside Agencies		
41. Commissions		
42. Stock Yards and Elevators,		2419.76
43. Rents for Tracks, Yards and Terminals- Page 47.B		49.88
44. Rents and Buildings and other Property,		190.90
45. Stationery and Printing,		2659.93
46. Other Expenses,	TOTAL	29667.86
GENERAL EXPENSES:		
47. Salaries of General Officers,		300.00
48. Salaries of Clerks and Attendants		
49. General Office Expenses and Supplies		54.00
50. Insurance		23.00
51. Law Expenses		
52. Stationery and Printing (General Offices		91.66
53. Other Expenses,	TOTAL	468.66
RECAPITULATION OF EXPENSES:		
54. Maintenance of Way and Structures,		5896.17
55. Maintenance of Equipment		3880.08
56. Conducting Transportation		29067.80
57. General Expenses		468.66
	GRAND TOTAL	39312.71
PERCENTAGE OF EXPENSES TO EARNINGS-ENTIRE LINE,		72.12
OPERATING EXPENSES- STATE OF MINNESOTA,	Same as above	
PERCENTAGE OF EXPENSES TO EARNINGS- Minnesota.		

VERTICAL IN BOOK PAGES

RENTALS PAID

A. Rents paid for lease of Road.

NONE

B. Rents paid for Lease of Tracks, Yards, and Terminals.

Designation of Property	Situation of Property Leased	Name of Company owning Property Leased	Item	Total
TRACKS Mt. of Way	In Minneapolis	Gr. N. Ry. N W Ry.	600.00 1201.20	
TOTAL				1801.20
YARDS:				
TERMINALS:	Minneapolis	G.N. Ry	618.56	
TOTAL				618.56
		GRAND TOTAL RENTS-B, (for entry on page 45, item 43)		2419.76

COMPARATIVE GENERAL BALANCE SHEET.

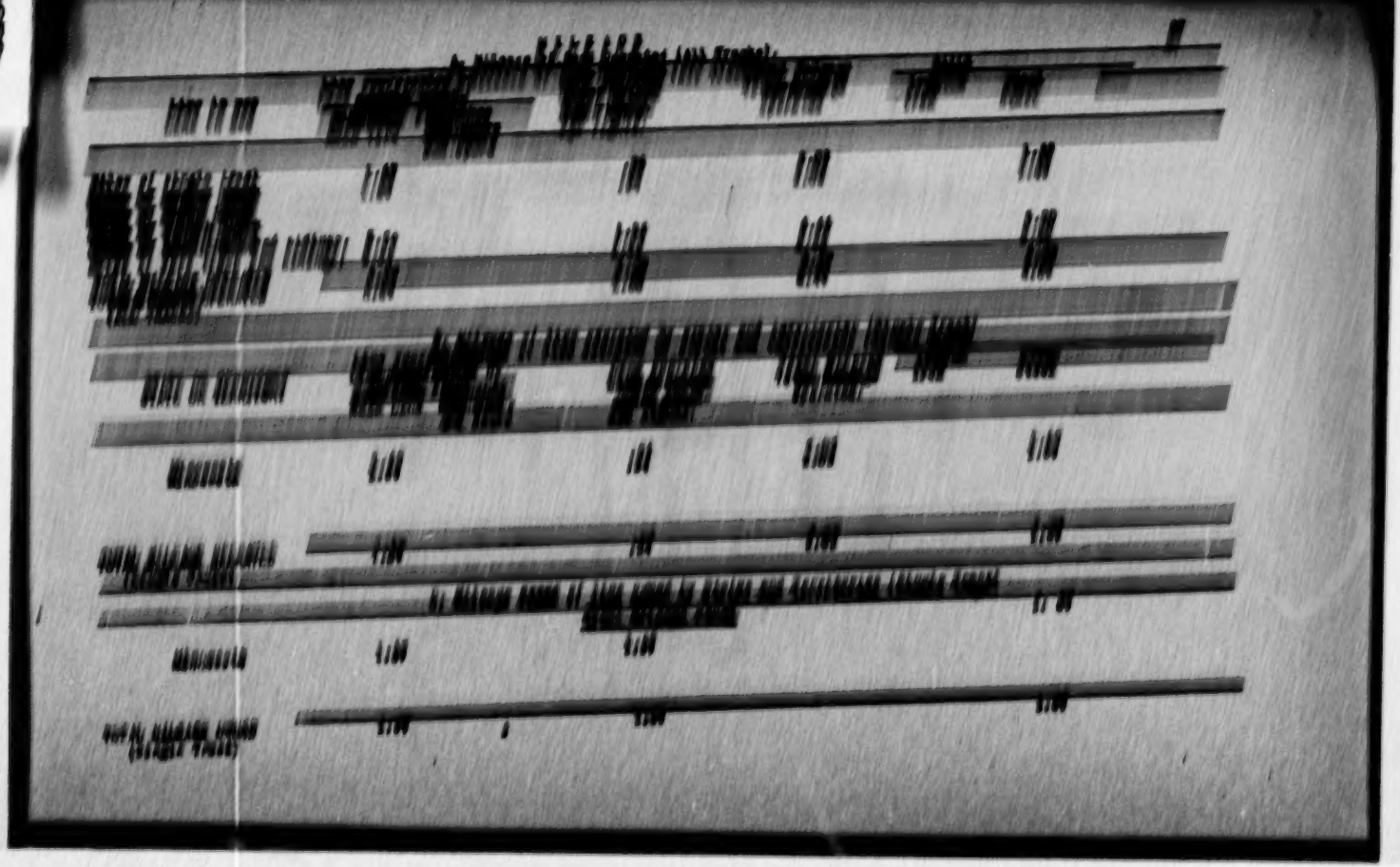
June 30.1906 Item	June 30.1906 Total	ASSETS	June 30.1907 Item	June 30.1907 Total	Year Ending June 30.1907 Increase	Year Ending June 30.1907 Decrease
	739850.18	Cost of Road, Page 27,		739850.18		
	12317.38	Cost of Equipment- Page 29,		12317.38		
		Bonds Owned- Page 37,				
		Stocks Owned- Page 38,				
		Other Permanent Investments,				
		Lands Owned,				
	30784.60	Cash and Current Assets- Page 33,		22288.03		8496.57
		OTHER ASSETS:				
	591.86	Equipment Trusts,		1399.00	808.14	
		Materials and Supplies				
		Sinking Fund,				
		Sundries,				
		Profit and Loss- Page 31 (or 33)		6386.26	6386.26	
	783545.94	GRAND TOTAL		782239.77		1304.17

June 30.1906 Item	June 30.1906 Total	LIABILITIES	June 30.1907 Item	June 30.1907 Total	Year Ending June 30.1907 Increase	Year Ending June 30.1907 Decrease
	250000.00	Capital Stock, Page 17,		250000.00		
	500000.00	F unded Debt- Page 22,		500000.00		
	20479.92	Current Liabilities- Page 22,		29581.94	6102.02	
		Real Estate Mortgages,				
	1096.81	Accrued Interest on Funded Debt not yet payable,		933.30		163.48
	862.222	Fund for Replacement of Equipment		1744.44	882.22	
	11104.99	Profit and Loss- Page 21 (or 23)				11104.99
	783543.96	GRAND TOTAL		782259.77		1284.17

ITEM.	Column for number passengers, tonnage, car mileage, number cars, etc.	Column for Revenue and rates.
PASSENGER TRAFFIC:		
1. Number of passengers carried earning revenue.		
2. Number of passengers carried one mile.		
3. Number of passengers carried one mile per mile of		
4. Average distance carr. road miles.		
5. Total passenger revenue- Page 35.		
6. Average amount received from each passenger		
7. Average receipts per passenger mile		
8. Total passenger earnings- Page 35.		
9. Passenger earnings per mile of road		
10. Passenger earnings per train mile.		
FREIGHT TRAFFIC:		
11. Number of tons carried ~~of freight~~ earnings-revenue, Page 63		
12. Number of tons carried one mile		
13. Number of tons carried one mile per mile of road miles		
14. Average distance haul of one ton		
15. Total freight revenue- Page 35.		
16. Average amount received for each ton of freight.		
17. Average receipts per ton per mile		
18. Total freight earnings- Page 35.		
19. Freight earnings per mile of road		
20. Freight earnings per train mile		
TOTAL TRAFFIC:		
21. Gross earnings from operation- Page 35.		49597.65
22. Gross earnings from operation per mile of road		34432.34
23. Gross earnings from operation per train mile		
24. Operating expenses, ~~passenger/freight~~ Page 45.		39848.77
25. Operating expenses per mile of road		19331.41
26. Operating expenses per train mile		
27. Income from operation- Page 31		10356.88
28. Income from operation per mile of road		5100.93
CAR MILEAGE, ETC.:		
29. Mileage of passenger cars		
30. Average number of passenger cars per train mile		
31. Average number of passengers per train mile		
32. Mileage of loaded freight cars- North or East		
33. Mileage of loaded freight cars- South or West		
34. Mileage of empty freight cars- North or East		

This company performs a switching service and keeps no record of mileage made by its switching engines or of the cars handled.

[redacted]



TAXES AND ASSESSMENTS OF ALL KINDS.
A. P or Reporting Company's owned and Proprietary Lines.

State or Territory	AD VALOREM TAX	SPECIFIC TAX On Gross or Net earnings, Revenues or Income.	On property owned not used in operation and Misc.	Internal Revenue U.S. Govt.	TOTAL
Minnesota.		1983.91			1983.91
TOTAL		1983.91			1983.91

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COPY OF

ABSTRACTS OF REPORTS TO

STATE OF MINNESOTA

BY GREAT NORTHERN RAILWAY CO.

AND OTHER LINES COMPRISING

GREAT NORTHERN SYSTEM IN

MINNESOTA.

1908.

(Endorsed:) Filed May 8th, 1911. Louise B. Trott, Clerk.

PAGES

ANNUAL REPORT

of the

GREAT NORTHERN RAILWAY COMPANY

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE OF MINNESOTA

For the Year Ending June 30th. 1907.

BLURRED P

CAPITAL STOCK

Description	Number of shares authorized	Par Value of shares	Total Par Value authorized	Total Amount issued and outstanding	Dividends declared during year: Rate	Dividends declared during year: Amount
CAPITAL STOCK	2,100,000	100.00	210,000,000.00	149,577,300.00	7%	10,469,661.65
Stock Script.				200.00		
TOTAL	2,100,000		210,000,000.00	149,577,300.00		10,469,661.65

Summary of Payment for Capital Stock	Number of shares issued during yr	Cash Realised on amount issued during year	Total number shares issued & outstanding	Total cash realised	Remarks
Issued for Cash:	200.	20,000.00	1,049,998	104,999,800.00	Includes $200. Stock Script outstanding.
Issued in Exchange for 90 shares S.P.M.&M.Ry. Capital Stock	112½		948,773		For 106,620 share of St.P.M.& M.Ry. stock
Issued for one half cash and one-half properties & securities transferred to this company by the St.P. M. & M. Ry. Co. as explained in reports of former years			200,000	10,000,000.00	
TOTAL	312½	20,000.00	1,499,773	114,999,800.00	

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MORTGAGE BONDS . MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS

Class of Bond or Obligation	TIME: Date of Issue	TIME: When due	Amount of authorized issue	Amount Issued	Amount outstanding	Cash realized on amount issued	INTEREST: Rate	INTEREST: When Payable	INTEREST: Amount accrued during year	INTEREST: Amount paid during year
Northern Pac.										
Gt. Northern										
Joint C.B.& Q.										
Collateral Trust Bonds	Jul 1 1901	Jul 1 1921	222,400,000.00	215,226,000.00	107,613,000.00	Issued in exchange for C.B.&Q. & N Stock		On Coupon bonds Jul 1. Jan 1 On Registered Bonds Jul 1, Oct 1. JA N 1 AR 1		Interest paid by C.B.&Q Ry
TOTAL: Miscellaneous Obligations:			222,400,000.00	215,226,000.00	107,613,000.00					
GRAND TOTAL			222,400,000.00	215,226,000.00	107,613,000.00			None Chargeable to Income of this Company		

RECAPITULATION OF FUNDED DEBT

CLASS OF DEBT	Amount Issued	Amount Outstanding	INTEREST
Miscellaneous Obligations Mortgage-Bonds-Page 19	107,613,000.00	107,613,000.00	NONE
	107,613,000.00	107,613,000.00	

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets available for payment of current liabilities		Current Liabilities accrued to and including June 30, 1937	
Cash	19,807,930.04	Audited Vouchers and Accounts	3,936,857.66
Bills Receivable	4,252,194.04	Wages and Salaries,	2,682,469.08
Due from Agents	3,009,347.99	Net Traffic Balances due to other Companies	1,219,901.80
Due from Solvent Companies & Individuals	3,947,330.56	Dividends not called for,	21.75
		Assets due July 1,	1,288,407.16
TOTAL-CASH & CURRENT ASSETS	31,016,708.63	TOTAL-CURRENT LIABILITIES	9,240,739.39
BALANCE-CURRENT LIABILITIES		BALANCE -CASH ASSETS,	21,760,963.24
TOTAL	31,016,708.63	TOTAL	31,016,708.63

Materials & Supplies on hand $6,8685,179.77

(See General Balance Sheet-Page 4a)

RECAPITULATION

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT

ACCOUNT	Total amount outstanding	Apportionment	
		To Railroads.	To Other properties (Page 11)
Capital Stock —Page 17	169,577,500.00		169,577,500.00
Bonds-Page 18 ("Grand Total")	107,613,000.00		107,613,000.00
Total	277,190,500.00		277,190,500.00

BLURRED

ITEM	Charged to Fund for Permanent Improvements and Renewals for year ending June 30,1907	Total Cost of Additions and Improvements made by the C.B.&Q. to property leased from St.P.M. & M. Ry. and charged to fund for Permanent Impts. and Renewals. June 30,1906	June 30,1907
CONSTRUCTION:			
1.Engineering	23,488.88	65,808.31	89,282.99
2.Right of Way and Station Grounds	183,317.69	757,068.63	940,386.32
3.Real Estate	28,548.40	57,858.58	86,402.98
4. Grading	850,117.64	1,238,098.83	1,918,216.47
5. Tunnels		1,969,582.75	1,969,582.75
6.Bridges,Trestles, and Culverts	420,978.84	819,974.45	1240,731.29
7.Ties	321,902.73	321,236.24	633,138.97
8.Rails	445,487.43	1,138,880.45	1,584,337.88
9.Trust Fastenings.	96,988.88	368,821.74	465,097.62
10.Frogs and Switches	156,972.88	188,726.36	256,697.24
11.Ballast	33,172.12	1,110,166.23	1,143,338.97
12. Trest Laying and Surfacing .	195,822.90	250,703.91	446,526.81
13.Fencing Right of Way	11,999.58	111,978.88	123,078.34
14.Crossings,Cattle Guards and Signs	1.50	4,369.33	4,345.63
15.Interlocking or Signal Apparatus	9,978.38	30,376.11	39,650.04
16.Telegraph Lines	3,668.78	3,877.00	545.78
17.Station Buildings and Fixtures	270,379.07	238,573.25	509,153.32
18.Shops,Roundhouses,and Turntables	417,370.22	817,146.38	1,234,516.61
19.Shop Machinery and Tools	168,034.31	639,240.66	787,274.97
20.Water Stations	388,618.33	633,152.09	1,019,142.42
21.Fuel Stations	44,600.91	11,837.78	56438.69
22.Grain Elevators		129,379.57	129,379.57
23 Storage Warehouses		2,077.47	2,077.47
24.Docks and Wharves	101.08	2,042.56	1,941.48
25.Electric Light Plants		12.87	12.87
26.Electric-Motive-Power Plants			
27.Gas-Making Plants	5,275.38	12,639.04	7,213.66
28.Miscellaneous Structures	144,878.51	278,256.11	421,132.62
29General Expenses		90.49	90.49
TOTAL CONSTRUCTION:	4,032,454.89	11,193,088.58	15,225,868.84

ITEM	Expended during year & chgd to Equipment	Total Cost of Equipt. June 30,1906	Total Cost of Equipt. June 30,1907	Expended dur. the yr and chgd to Fund for Perm. Impts. & Renewals	Total Additions & Impts made by G.N.Ry. to property leased from the St.P.M.&M.Ry. and pd for from "Fund for Perm. Impts.& Renewals	
					June 30,1906	June 30,1907
EQUIPMENT.						
1.Locomotives,	3,868,190.44	5,300,975.94	9,246,166.38	2,696.24	977,711.64	980,407.88
2. Passenger Cars,	490,505.80	648,614.48	1,139,120.08	931.06	11,801.80	12,370.84
3.Sleeping,Parlor and Dining Cars	5,363.18	1,303,734.71	1,309,097.89	1,891.36	24,613.50	26,722.23
4.Baggage,Express and Postal "	139,905.06	367,752.58	507,157.64	314.00	44,105.66	44,419.66
5.Combination Cars,						
6.Freight Cars		9,571,209.66	13,569,771.90	14,485.00	3,648.82	18,133.82
7. Other Cars of All Classes	2,490,666.50	887,666.82	679,793.08	14,485.00	22,370.73	36,855.73
TOTAL EQUIPMENT,	3,991,552.78	18,179,564.19	26,171,096.97	3,970.30	618,627.47	622,597.97
TOTAL CONSTRUCTION-Page 29				4,022,444.28	11169,098.98	15229,550.84
GRAND TOTAL CONSTRUCTION,EQUIPMENT,etc.						
Total Cost Construction,etc.-MINNESOTA				4,026,434.76	11,611,716.05	15,648,150.81
Cost of Construction per mile of line)	No basis for apportionment per mile			1,338,380.94	as asset stated	
Cost of Equipment per mile of line)						

QUESTION	ANSWER	REMARKS
1.Does the absence of any entry under the heading "Included in Operating Expenses"(Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expenses?	1.NO.	The cost of a great many items of permanent improvements and betterments is charged to Operating expenses, but no attempt is made to separate in our accounts the Cost of such items from the cost of ordinary maintenance and renewals.

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INCOME ACCOUNT

For Roads making Operating Reports

Gross Earnings from Operation-Page 35		30,206,035.10	
Less Operating Expenses- Page 45		29,466,866.80	
	INCOME FROM OPERATION		20,741,168.30
Dividends on Stocks owned -Page 37		996,079.04	
Interest on Bonds Owned -Page 39		396,087.81	
Miscellaneous Income -Page 41		1,707,472.99	
	INCOME FROM OTHER SOURCES,		3,099,640.34
	TOTAL INCOME :		23,840,809.34
DEDUCTIONS FROM INCOME:			
Interest on Interest-bearing Current Liabilities,etc		137,663.13	
Rents paid for Lease of Road-Page 47,A		4,080,395.76	
Taxes-Page 78-A		1,682,699.31	
Fund Permanent Improvements & Renewals	2,000,000.00		
Other Deductions,Replacement of Equipment	2,934,978.52	4,934,978.52	
	TOTAL DEDUCTIONS FROM INCOME.		11,835,466.48
	NET INCOME,		12,005,344.86
Dividends 7 per cent Stock-Page 37		10,489,661.88	
	TOTAL		10,489,661.88
Surplus from Operations of Year ending June 30,1907			1,515,683.27
Surplus on June 30,1906 (From"General Balance Sheet" 1906 Rpt)			22,383,165.81
			1,889,149.88
Deductions for Year			23,766,719.69
SURPLUS ON JUNE 30,1907 (For Entry on"General Balance Sheet",Page 31)			

NOTE

The amount shown on Page 31 or "Deductions for Year" is made up as follows:	1,489,700.88
Reduction in book value of securities owned	
Commission for payment of interest on & other expenses in connection with N.P.,G.N.	612,988.88
Joint C.B. & Collateral Bonds	37,160.00
Loss on property sold & bad debt charged off	49,277.52
" from operation of Lake & Ocean Steamship Line	1,889,126.88

Cont.

In answering the question on page 33 the apportionment to the state of Minnesota shall consist of:

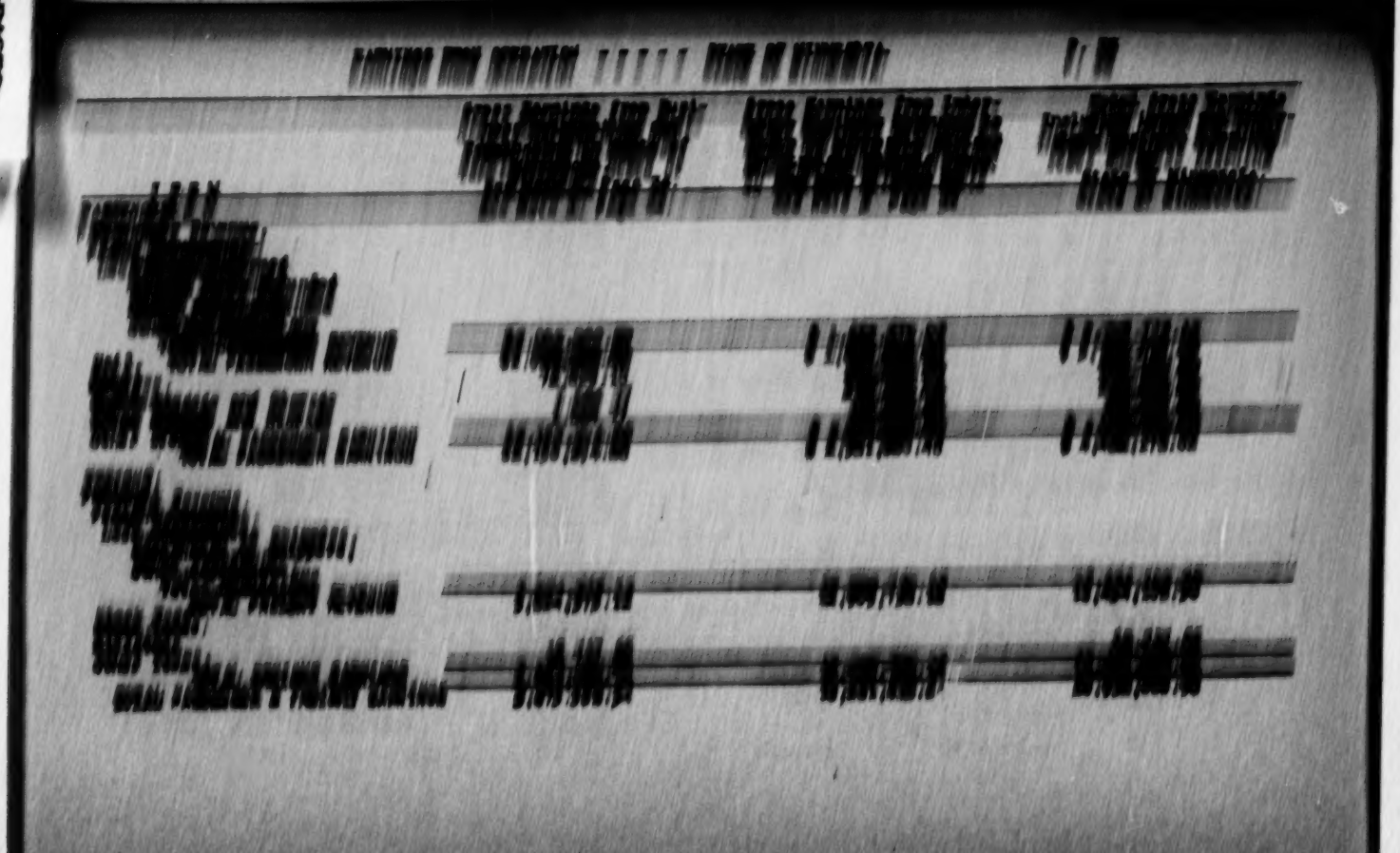
Rule 1. Gross earnings from business originating and terminating in the State of Minnesota.

Rule 2. The proportion of Gross Earnings accruing to Minnesota on all interstate business divided on a straight mileage basis 1.6.

A proportion based upon the proportion of the mileage within the State to the entire mileage over which such business is done, of earnings on all interstate business passing through, into or out of the State

By order of

THE RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA.



ITEM	Gross Earnings from Business Originating and Terminating in State of Minnesota. See Note 1, Page 34.	Gross Earnings from Interstate Business Accruing to State of Minnesota Divided on Straight Mileage Basis. See Note 2, Page 34.	Total Gross Earnings Including Local and Interstate Business Accruing to State of Minnesota.
Forward	$5,673,385.34	$15,261,615.64	$20,935,000.98
OTHER EARNINGS FROM OPERATION:			
Switching Charges - Balance,	233,975.99		233,975.99
Car Per Diem and Mileage-Balance			
Hire of Equipment-Balance			
Telegraph and Telephone Companies,	1,129.36		1,129.36
Rents from Tracks, Yards & Terminals (Page 41),	48,657.64		48,657.64
Rents not otherwise provided for,	27,605.63		27,605.63
Other Sources;			
TOTAL OTHER EARNINGS	311,368.56		311,368.56
TOTAL GROSS EARNINGS FROM OPERATION-MINNESOTA (Local and Interstate)	$5,984,753.90	$15,261,615.64	$21,246,369.54
TOTAL GROSS EARNINGS FROM OPERATION-ENTIRE LINE			$50,208,025.10

The figures entered on this page as "Gross Earnings from Interstate Business Accruing to State of Minnesota, Divided on Straight Mileage Basis", have been compiled as indicated by the caption and in accordance with the demands of the Board of Railroad & Warehouse Commissioners, and are given under protest, for the reason the Company claims that basis does not truthfully reflect the amount earned within the State of Minnesota.

STOCKS OWNED

A. RAILWAY STOCKS

NAME	Total Par Value	Income: Rate	Income: per dividend received	VALUATION
Northern Ry.Company of Minnesota	$ 5,000,000.00			$ 5,000,000.00
Western Central Railway Co.	5,000,000.00	7	350,000.00	5,000,000.00
Willmar &Sioux Falls Ry Co.	1,500,000.00	7	105,000.00	1,500,000.00
Duluth,Watertown & Pacific Ry.Co.	720,000.00			720,000.00
Minneapolis Union Ry.	800,000.00	10	80,000.00	800,000.00
St.Paul Union Depot Co.	43,750.00	2	875.00	43,750.00
Minnesota Transfer Ry. Co.	7,000.00			7,000.00
Lake Superior Ter. & Trans.Ry Co.	13,700.00			13,700.00
See Note 1.Page 36	13,706,450.00			13,706,450.00
Minneapolis Western Ry. Co.	250,000.00			250,000.00
Great Northern Ry. Co.	79,200.00	7	5,474.00	79,131.34
Butte,Anaconda & Pacific Ry Co.	400,000.00	6	24,000.00	400,000.00
Seattle & Montana R R Co.	13,997,350.00			11,499,840.00
St.Paul,Minneapolis & Manitoba Ry.	19,140,000.00			26,877,380.00
Eastern Ry. Co. of Minnesota	11,000,000.00			12,000,000.00
Willmar & Sioux Falls Ry.	3,200,000.00		288,000.00	3,200,000.00
Spokane Falls & Northern Ry.	2,879,000.00			
Nelson & Fort Sheppard Ry. Co	1,200,000.00			2,274,847.04
Red Mountain Ry Co.	190,600.00			
Columbia & Red Mountain Ry.Co.	284,600.00			
Kootenay Ry. & Navigation Co.(All Securities	$ 219,717	Debenture stock		
	£ 300,000	Common Shares		1,345,888.04
St.Paul Union Depot Co.	$ 99,800.00		1,188.00	99,800.00
Chi.R. & Q. R R Interest in	215,236,000	107,613,000.00		108,114,309.76
Montana & Great Northern Ry.Co.		7,000,000.00		7,000,000.00
Lake Superior Ter. & Trans.Co.		20,000.00		20,000.00
Duluth & Great Northern Ry.		2,000,000.00		2,000,000.00
Washington & St.Northern Ry.		2,000,000.00		2,000,000.00
Farmers Grain & Shipping Co.		10,000.00		10,000.00
Port Rapids & Lonak Lake Ry. Co.		500,000.00	? 25,000.00	500,000.00
Duluth Terminal Ry.			1,000.00	
Subscriptions account New Stock				250,149.50
TOTAL			824,888.00	278,348,896.18

B. OTHER STOCKS

NAME	TOTAL PAR VALUE	RATE	INCOME OR DIVIDEND RECEIVED	VALUATION
Northern Steamship Company	1,500,000.00			1,500,000.00
Clinton Coal Company	149,000.00			N A A
Fort Benton Bridge Co.	5,000.00			N A A
See Note 1, Page 26	1,654,000.00			1,500,000.00
John O'Brien Lumber Co.	125,000.00			190,000.00
Duluth & Superior Bridge Co.	800,000.00			200,000.00
Great Northern Steamship Co.	6,000,000.00			1,000,000.00
Crown Royal Phos Coal Co.	125,000.00		20,627.99	907,877.40
Dividend read on Stock sold during the year			572.25	
TOTAL B	6,689,000.00		21,190.24	7,297,877.40
TOTAL A			966,888.80	178,340,294.74
GRAND TOTAL A & B			988,079.04	185,638,172.14

NOTE

The following stocks shown on page 27 were acquired from the St. P. M. & M. Ry. on subscription to the Company's Capital Stock, same being made for the benefit of St. P. M. & M. Ry. stockholders:

Railroad Stocks	12,394,400.00
Other stocks	1,654,000.00

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A. RAILWAY BONDS

NAME	Total Par Value	Rate	Income or Interest Received	Valuation
Duluth, Winnipeg & Pac. Ry.Co.	1,275,000.00		17,220.00	1,275,000.00
Minnesota Transfer Ry.Co.	109,000.00		882.16	109,000.00
	1,384,000.00			1,384,000.00
St.P.M. & M. Ry.Pur.Mtg.Bonds	$ 5,000,000.			$ 10,000,000.00
" Improvement	$ 5,000,000.00			5,000,000.00
Butte, Anaconda & Pacific Ry.	1,000,000.00		30,000.00	900,000.00
Minnesota Transfer Ry.	40,000000		600.96	40,000.00
Willmar & Sioux Falls Ry.	21,000.00		1,050.00	21,000.00
Park Rapids & Leech Lake Ry.	300,000.00		12,000.00	300,000.00
Duluth, Superior & West.Ter.Co.	300,000.00		30,000.00	300,000.00
Farmers Grain & Shipping Co. 1st Mortgage	114,000.00		5,421.30	119,000.00
Spokane Falls & Northern Ry. Co.	2,500,000.00	6	134,000.00	
Helena & Fort Shepherd Ry Co.	1,250,000.00		77,000.00	4,000,997.16
Col. & Red Mountain Ry. Co.	191,000.00		17,460.00	
Red Mountain Ry. Co.	217,000.00		13,000.00	
Duluth Terminal Ry. Co.			10,000.00	
TOTAL			351,177.11	11,488,997.16

B. OTHER BONDS

NAME	TOTAL PAR VALUE	INCOME OR INTEREST RECEIVED	VALUATION
Town of Anderson	2,000.00	120.00	1,948.00
" " Minnesota Falls		240.00	
	2,000.00		1,948.00
Duluth & Superior Bridge Co.			
1st Mortgage Bonds	650,000.00	6,120.00	650,000.00
and " "	300,000.00		300,000.00
TOTAL		6,240.00	952,000.00
		357,417.11	12,441,997.16

NOTE: P. 28 GRAND TOTAL A & B

The following bonds shown on page 28 were acquired from the St.P.M.&M.Ry.Co. as subscription to this Company's capital stock,same being made for the benefit of St.P.M.&M. stockholders:

Railway Bonds	1,000,000.00
Other "	2,000.00

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS AND TERMINALS

Designation of property	Situation of property	Name of Company using property Leased	ITEM	TOTAL
TRACKS:	Moosbe Division	Moosbe So. Ry	454.00	
		Swan River Log. Co.	3,589.75	
TOTAL				4,043.75
YARDS & FACILITIES	Willmar, Minn	W. & N. W. Ry.	4,500.00	
	Devils Lake, N.D.	Farmers Gr & Shop Co.	1,272.98	
	Spokane and Hillyard, Wash	Spok. Falls & No. Ry.	13,581.74	
	O.R. & N. Jct.	C. R. & N. Co.	252.96	
	Adrian, Wash.	Northern Pacific Ry	1,669.20	
TOTAL				20,946.78
TERMINALS:	St. Paul & Mpls.	Chi. Burl. & Quincy Ry.	20,740.21	
	" "	Mpls. & St. L. Ry.	1,882.48	
	" "	Coal & Elevator Co.	8,446.25	
	Minn. Transfer	Minn. Transfer Co.	871.42	
	Minneapolis	Minneapolis Union Ry.	872.10	
	"	Minneapolis West. Ry.	368.42	
	St. Paul, Minn.	W. & S. T. Ry.	1,633.06	
	" "	Mont. & Central Ry.	2,240.93	
	Superior, Wis.	Coal & Elevator Co.	115,172.26	
	St. Falls, West	Mont. & Cent. Ry.	2,600.00	
TOTAL				154,586.17
		GRAND TOTAL RENTS RECEIVED (For entry on page 35)		183,576.70

MISCELLANEOUS INCOME

ITEM	NET MISCELLANEOUS INCOME
Rental of leased lines	190,901.41
Bills Receivable (Land Notes)	2,569.44
Rental of Equipment & Car Service	444,694.98
General Interest and Profit on Securities Sold	1,097,272.19
Miscellaneous	21,934.78
TOTAL	1,757,473.99

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ITEM		AMOUNT
MAINTENANCE OF WAY AND STRUCTURES:		
1.Repairs of Roadway		3,189,754.79
2.Renewals of Rails		284,251.81
3.Renewals of Ties		506,218.90
4.Repairs and Renewals of Bridges and Culverts		316,254.81
5.Repairs and Renewals of Fences,Road Crossings,Signs and Cattle Guards		77,860.30
6.Repairs and Renewals of Buildings and Fixtures		623,868.99
7.Repairs and Renewals of Docks and Wharves		36,588.01
8.Repairs and Renewals of Telegraph		32,935.03
9.Stationery and Printing		11,467.70
	TOTAL	5,364,389.34
MAINTENANCE OF EQUIPMENT:		
11.Superintendence		94,404.01
12.Repairs and Renewals of Locomotives		1,280,521.79
13.Repairs and Renewals of Passenger Cars		723,911.89
14.Repairs and Renewals of Freight Cars		1,934,814.61
15.Repairs and Renewals of Work Cars		231,057.23
16.Repairs and Renewals of Marine Equipment		
17.Repairs and Renewals of Shop Machinery and Tools		88,996.96
18.Stationery and Printing		9,982.36
19.Other expenses		23,777.84
	TOTAL	3,345,966.61
CONDUCTING TRANSPORTATION:		
20.Superintendence		517,073.90
21.Engine and Roundhouse Men		2,934,027.74
22.Fuel for Locomotives		4,778,882.72
24.Oil,Tallow and Waste for Locomotives		92,702.74
25.Other Supplies for Locomotives		65,804.05
26.Train Service		1,973,932.80
27.Train Supplies and Expenses		461,977.67
28.Switchmen,Flagmen and Watchmen		832,019.77
29.Telegraph Expenses		304,688.26
30.Station Service		1,315,463.08
31.Station Supplies		181,288.19
33.Water Supply for Locomotives		164,636.92
34.Car Per Diem and Mileage-Balance		893,738.74
36.Hire of Equipment-Balance		94,482.52
TOTAL CARRIED FORWARD -		12,296,976.65

ITEMS		AMOUNT	
CONDUCTING TRANSPORTATION-CONTINUED			
	Total brought forward-	13,894,878.61	
29.Loss and Damage		864,436.68	
31.Injuries to Persons		798,888.08	
37.Clearing Wrecks		280,484.31	
38.Operating Marine Equipment			
39. Advertising		91,093.27	
40.Outside Agencies		298,911.02	
41.Commissions		6,897.09	
42.Stock Yards & Elevators			
43.Rents for Tracks, Yards and Terminals-Page 47, B		881,087.49	
46.Rents of Buildings and Other Properties		10,068.27	
49.Stationery and Printing		180,398.25	
44.Other Expenses		47,041.92	
	TOTAL	15,894,882.15	
GENERAL EXPENSES:			
47.Salaries of General Officers		174,889.89	
48.Salaries of Clerks and Attendants,		383,118.19	
49.General Expenses and Supplies		73,918.70	
50.Insurance		178,615.41	
51.Law Expenses		116,826.41	
52.Stationery and Printing (General Offices)		47,436.78	
53.Other Expenses		28,336.61	
	EQUAL	996,150.20	
RECAPITULATION OF EXPENSES:			
54.Maintenance of Way and Structures,		7,261,867.94	
55 .Maintenance of Equipment		2,343,546.61	
56.Conducting Transportation		15,812,882.15	
57.General Expenses		996,150.20	
	GRAND TOTAL	29,446,866.20	
PERCENTAGE OF OPERATING EXPENSES TO EARNINGS- - - - -			58.65
	Operating Expenses State of Minnesota.		
	Maintenance of Way & Structures	3,980,826.32	
	Maintenance of Equipment	2,083,321.15	
	Conducting Transportation	6,122,488.79	
	General Expenses	992,873.72	11,119,508.98
	PERCENTAGE OF EXPENSES TO EARNINGS-MINNESOTA.	58.55	

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5. RENTS PAID FOR LEASE OF ROAD

NAME OF ROAD	Interest on Bonds Guaranteed.	Dividends on Stock Guaranteed	Cash	TOTAL
St.Paul,Min. & Manitoba	3,383,932.56	1,200,000.00	5,000.72	4,727,993.28
Eastern Railway of Minnesota	435,000.00	960,000.00		1,395,000.00
Duluth,Superior & Western Terminal			20,000.00	20,000.00
Fort Rapids & Lough Lake Ry.			41,932.48	41,932.48
Province of British Columbia			15,000.00	15,000.00
	3,956,932.56	2,160,000.00	101,932.20	6,219,865.76
1936				
Amount received by this Company as dividends paid and accrued on stock of St.P.M.&M.Ry.,obtained as exchange for G.N.Ry.Co. stock.-		1,179,540.00		1,179,540.00
Dividends accruing upon N.Ry.of Minbesk owned by this Company.		960,000.00		960,000.00
TOTAL RENTS-A (for entry on P.21 (or 19)	3,956,932.56	38,460.00	101,932.20	6,060,265.76

Continued on next page

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS

Designation of property	Situation of property leased	Name of Company owning Property leased	ITEM	TOTAL
TRACKS:	Duluth, Minn.	Dul. Terminal Ry.	45,876.09	
	St. Louis Riv. Bridge	Northern Pacific Ry.	17,890.00	
	Spok. to Millyard	Spok. Falls & Nor. Ry.	1,458.42	
	Lowell & Delta	Northern Pac Ry.	6,628.67	
	Bagdale to Red Lk F.			
	Fargo & Casselton	" " "	5,622.70	
	Everett & G.N. Jct.	" " "	176.48	
	Seattle	" " "	114.13	
	Spokane	" " "	90.00	
	Minneapolis	C. G. W. Ry.	115.27	
	Fosdick, Minn.	Minn. & Internat'l Ry.	147.34	
	Hibbing District	Duluth, Miss. & Nor.	1,103.35	
		TOTAL		86,076.77
TERMINALS:	St. Paul, Minn.	St. P. U. D. Co.	35,510.88	
	Minnesota Trans.	Minn. Trans Ry. Co.	130,458.66	
	Minneapolis	Mpls. Union Ry. Co.	86,627.60	
	Superior, Wis.	Lake Sup. T. & T. Ry Co.	6,510.23	
	Duluth, Minn.	Duluth, Union Depot Co.	21,521.23	
	Seattle, Wash.	King Street. Pass. Sta.	24,886.17	
		TOTAL		305,010.72
		GRAND TOTAL RENTS-B (For entry on page 45 Item 43)		391,087.49

COMPARATIVE GENERAL BALANCE SHEET

June 30, 1908 Item	June 30, 1908 Total	ASSETS	June 30, 1907 Item	June 30, 1907 Total	Year ending June 30, 1907 Increase	Year ending June 30, 1907 Decrease
13,998,398.32		Cost of Properties & Securities	13,835,068.41			68,307.80
18,179,564.19		Cost of Equipment-P 29	24,171,096.97		5,991,532.78	
194,058,942.26		Stocks owned-P 37	195,638,973.68		1,580,031.37	
26,188,497.53		Bonds owned-Page 38	22,377,457.53		19,000.00	
3,094,348.99		Other Permanent Instm.	2,581,328.30			523,020.40
38,717,788.31		Advances a/c construct.	31,375,605.11		22,857,536.90	
	281,309,436.52			310,969,510.37		
	11,611,716.05	(Cost of Additions & Impr. made by the S.H.Ry. to property leased from the St.P.M.& .22 Co. & paid for from "Fund for Permanent Imprs & Equip".		15,668,150.81	4,056,434.76	
	23,217,176.17	Cash & Current Assets-P 23		31,016,703.63	7,799,526.46	
		OTHER ASSETS:				
2,630,359.15		Materials & Supplies	5,988,179.77		3,084,820.62	
67,375.93		Advanced Charges	89,072.43		21,696.50	
	2,998,135.08			3,974,252.20		
		Profit and Loss -Page 11 (or 33)				
	320,036,463.82			362,608,416.80	43,971,190.19	

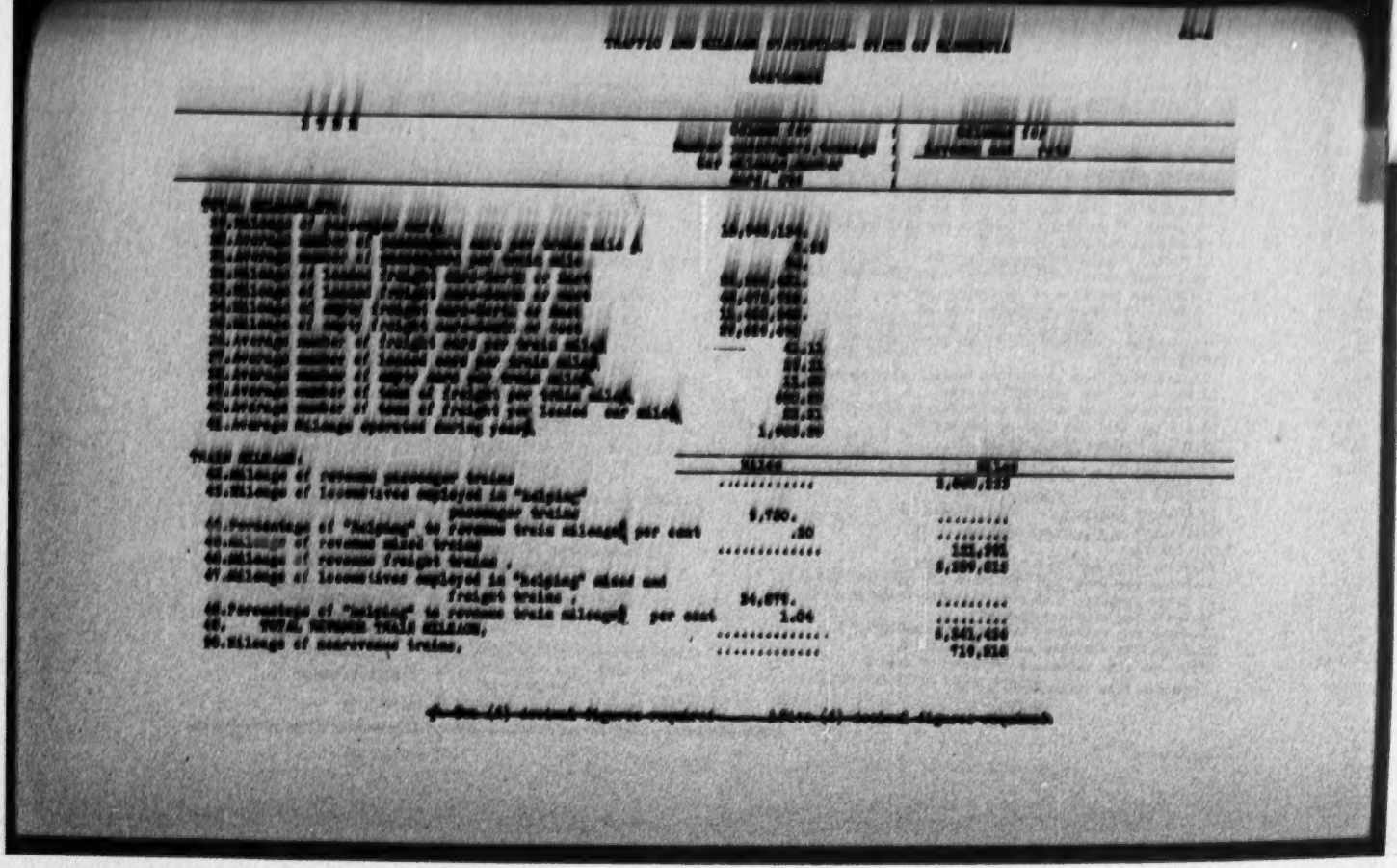
COMPARATIVE GENERAL BALANCE SHEET
Continued

June 30, 1906 Item	Total	LIABILITIES	Item	June 30.1907 Total	Year ending June 30, 1907 Increase	Decrease
	149,546,089.00	Capital Stock-Page 17 Stock Subscriptions		149,577,500.00	31,450.00	
	107,613,600.00	Funded Debt-Page 19		24,616,213.00	24,613,213.00	
	6,154,888.94	Current Liabilities-P 21		107,613,000.00	600.00	
				9,246,738.39	3,091,850.43	
		Accrued Interest not Yet payable				
	680,226.82	Accrued Taxes not due		337,488.13	337,488.13	
	288,610.00	Accrued Rentals not due		888,226.00	309,781.67	
				284,285.00		4,405.00
	11,611,716.08	{Cost of Addns.& Impts. {made by the St.M.Ry.Co. {to property leased from {St.P.M.&M.Ry.and pd for {from "Fund for Perm.Impts. {and Renewals."		15,648,150.81	4,036,434.76	
	6,583,689.42	{Unexpended Fund for Perm. {Impts.& Renls.		4,527,205.24		2,036,434.76
	3,872,176.98	{Fund for replacement of {Equipment		6,651,521.73	2,779,344.75	
	441,743.11	Insurance Fund		444,410.69	6,667.58	
	54,930.48	{ Sinking Fund.Superior { Coal Docks		72,944.62	17,938.14	
	9,411,180.19	{ Surplus Funds of Proprietary { Companies Operated with { this company		9,637,398.01	226,217.84	
	23,892,165.81	Profit and Loss -P 21 (or 22)		23,766,719.46	178,553.65	
	380,036,481.84		GRAND TOTAL -	368,606,616.01	43,971,190.19	

ITEM	Column for number passengers, tonnage per mileage, number cars, etc.	Columns for Dollars and cents	
		Dollars	¢ Mills
PASSENGER TRAFFIC:			
1.Number of passengers carried earning revenue	2,986,980.		
2.Number of passengers carried one mile	166,340,970		
3.Number of passengers carried one mile per mile of road	97,321		
4.Average distance carried ¶ miles	55.68		
5.Total Passenger Revenue-Page 28		3,708,776.68	
6.Average amount received from each passenger ¢			1.48021
7.Average Receipts per passenger per mile ¢			.02231
8.Total Passenger earnings- Page 28		4,482,173.82	
9.Passenger earnings per mile of road $		2,384.22	
10.Passenger earnings per train mile ¢			1.80247
FREIGHT TRAFFIC:			
11.Number of tons carried of freight earning revenue-P.48	14,260,894.		
12.Number of tons carried one mile	2,388,705,384		
13.Number of tons carried one mile per mile of road	1,190,048.		
14.Average distance haul of one ton ¶	199.51		
15.Total freight revenue-Page 28		18,434,184.30	
16.Average amount received for each ton of freight ¢			1.52160
17.Average receipts per ton per mile ¢			.00723
18.Total Freight Earnings-Page 28		16,488,885.96	
19.Freight earnings per mile of road $		8,241.60	
20.Freight earnings per train mile ¢			6.72219
TOTAL TRAFFIC:			
21.Gross Earnings from Operation-Page 28		21,346,909.54	
22.Gross earnings from operation per mile of road $		11,190.46	
23.Gross Earnings from operation per train mile ¢			8.56441
24.Operating expenses-Page 28		11,119,388.98	
25.Operating expenses per mile of road $		5,540.68	
26.Operating expenses per train mile ¢			4.72249
27.Income from operation per mile of road $		5,319.03	
Income from operation-Page 28		10,134,960.56	

¶ Item (2) Revenue figures required ¢ Item (6) Revenue figures required.

Continued:



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TRAFFIC AND MILEAGE STATISTICS
Continued

ITEMS	Column for number passengers, tonnage Cars, etc	Columns for Revenue and P a i d o n Dollars & Mills
CAR MILEAGE ETC.:		
29. Mileage of Passenger cars,	43,897,056.	
30. Average number of passenger cars per train mile	3.70	
31. Average number of passengers per train mile	84.	
32. Mileage of loaded freight cars -North or East	135,866,668.	
33. Mileage of loaded freight cars--South or West	110,227,412.	
34. Mileage of empty freight Cars--North or East	21,666,988	
35. Mileage of Empty Freight Cars- South or West	26,221,186	
36. Average number of freight cars per train mile	26.97	
37. Average number of loaded cars per train mile	16.08	
38. Average number of empty cars " " "	8.89	
39. Average " of tons of freight " "	561,96	
40. Average number of tons of freight per loaded car mile	20.00	
41. Average mileage operated during year	8,224.48	

	MILES	MILES
TRAIN MILEAGE :		
42. Mileage of revenue passenger trains,	... ...	7,312,768
43. Mileage of locomotives employed in "Helping" Passenger Trains	91,114.	... ...
44. Percentage of "Helping" to revenue train mileage per cent.	1.25	... ...
45. Mileage of revenue mixed trains,	... ...	387,421.
46. Mileage of revenue freight trains	... ...	8,978,418
47. Mileage of Locomotives employed in "Helping" mixed & freight trains,	543,005.	... ...
48. Percentage of "Helping" to revenue train mileage per cent	5.90	
49. TOTAL REVENUE TRAIN MILEAGE,	... .	16,678,613
50. Mileage of nonrevenue trains,	... ...	1,641,724

[illegible] Item (8) [illegible] figures required ... Item (9) [illegible] figures required.

FREIGHT TRAFFIC MOVEMENT

(Company's material excluded)

Includes Report of DULUTH, WATERTOWN & ARD PACIFIC RAILWAY

COMMODITY		Freight Originating on this road	Freight received from Connecting roads and other carriers	Total Freight Tonnage Whole Tons	Per Cent.
PRODUCTS OF AGRICULTURE	Grain	Cannot give this		2,796,873	13.86
	Flour			384,097	1.93
	Other Mills Products			169,269	.84
	Hay			110,188	.55
	Tobacco				
	Cotton			180,904	.84
	Fruits & Vegetables			222,198	1.10
	Other Products of Agriculture.		TOTAL	3,863,531	21.77
PRODUCTS OF ANIMALS	Live Stock			191,809	1.06
	Dressed Meats,			13,864	.07
	Other Packing-House Products,			917	—
	Poultry, Game and Fish.			1,486	.01
	Wool			9,189	.06
	Hides, Leather & Tallow			3,700.	.02
	Other Products of Animals			1,141	.01
			TOTAL	222,496	1.21
Products OF MINES	Anthracite Coal			166,127	2.01
	Bituminous Coal			1,038,434	5.73
	Coke			180,364	.99
	Stone, Sand and Other articles			194,169	1.06
	Other Products of Mines			28,704	.15
	ORES			7,424,323	41.82
			TOTAL	7,430,199	51.75
PRODUCTS OF FORESTS	Lumber, Lath & Shingles			1,428,417	8.08
	Other Products of Forests				6.78
			TOTAL	2,699,284	14.86

FREIGHT TRAFFIC MOVEMENT Continued
Company's Material Excluded
Includes Report of Duluth, Watertown and Pacific Ry.

	COMMODITY	Freight originating on this road	Freight received from connecting roads and other carriers	TOTAL FREIGHT TONNAGE Whole tons	Per cent
		Cannot give this			
MANUFACTURES	Petroleum and other Oils			46,186	.28
	Sugar				
	Naval Stores				
	Iron, Pig and Bloom			28,988	.16
	Iron and Steel Rails			119,664	.66
	Other Castings and Machinery			94,000	.52
	Bar and Sheet Metal			156,101	.86
	Cement Brick and Lime			207,413	1.17
	Agricultural Implements			78,260	.40
	Wagons, Carriages Tools, Etc.			17,082	.10
	Wines, Liquors and Beers			48,877	.27
	Household Goods and Furniture			21,448	.12
	Other Manufactures			105,813	.60
			TOTAL	921,057	5.09
	Merchandise			538,137	2.95
Miscellaneous	Other Commodities not mentioned above			444,656	2.43
			TOTAL TONNAGE	18,226,006	100.00

NOTE
The freight movement shown on page 62 includes report for the Duluth, Watertown & Pacific Ry Co. and is explained as follows:

Total shown		18,226,006 tons
Great Nor Ry, P. 61	18,221,120	
D. W. & P. Ry. Report P 61	99,307	18,320,427 "
Tonnage interchanged between G.N.Ry. & D.W & P Ry		94,421 "

A. Mileage of Road Operated (All tracks)

LINE IN USE	Line Operated under lease	Line Operated under trackage rights	Total Mileage Operated	New Line Constructed during yr	RAILS Iron & Steel	
Miles of single track	1,884.86	15.02	1,899.88	9.39	18.12	1,866.74
Miles of second track,	84.97	2.63	88.30	3.18		86.97
Miles of third track	9.38		9.38			9.38
Miles of Fourth Track	9.39		9.39			9.39
Miles of Yard Track and sidings,	580.35		580.35	21.32	580.35	
Miles of Fifth Track	1.32		1.32			1.32
Miles of Sixth Track	1.44		1.44			1.44
TOTAL MILEAGE OPERATED(all tracks)	2,564.11	17.65	2,571.76	33.89	598.47	1,953.64

B. MILEAGE OF LINE OPERATED BY STATES & TERRITORIES
(Single Track)

STATE OF MINNESOTA	Line operated under lease	Line operated under Trackage rights	Total mileage operated	New Line Constructed during yr	RAILS Iron	Steel
	1,884.86	15.02	1,899.88	9.39	18.12	1,866.74
	1,884.86	15.02	1,899.88	9.39	18.12	1,866.74

A. MILEAGE OF ROAD OPERATED (All Tracks)

Line in Use	Line of Proprietary companies	Line operated under lease	Line operated under contract etc.	Line operated under trackage rights	Total mileage operated	New Line Constructed during yr	RAILS Iron & Steel	Steel
Miles of Single Track	415.88	4,739.88	142.99	36.83	5,335.38	163.15	49.93	5,234.97
Miles of Second Track	2.26	87.94		2.63	92.83	3.23		90.30
Miles of third track		9.28			9.28			9.28
Miles of fourth track		9.29			9.29			9.29
Miles of yard track and sidings	98.96	1,213.43	8.82		1,321.21	144.88	1,321.21	
Miles of fifth track		2.32			2.32			2.32
Miles of sixth track		1.44			1.44			1.44
TOTAL MILEAGE OPERATED AllTracks	516.87	6,063.58	151.81	39.46	6,771.72	313.07	1,368.16	5,397.10

B.MILEAGE OF LINE OPERATED BY STATES & TERRITORIES (Single Track

State or Territory	Line of Proprietary companies	Line operated under lease	Line Operated under contract.etc	Line Operated under trackage rights	Total mileage operated	New Line Constructed during year	RAILS Iron & Steel	Steel
Minnesota		1,884.86		15.08	1,899.88	3.58	18.12	1,866.74
Wisconsin		27.69			27.69			27.69
North Dakota		1,399.81		18.06	1,418.87	13.10	23.62	1,373.98
South Dakota		99.25			99.25			99.25
Montana		883.01	142.99		1,026.00			1,026.00
Idaho		82.31			82.31			82.31
Washington	191.89	252.75		3.75	547.29			544.84
British Columbia	77.30				77.30			77.30
Manitoba	146.46				146.46	146.46		146.46
TOTAL MILEAGE OPERATED Single Track	415.88	4,739.88	142.99	36.83	5,335.38	163.15	49.93	5,234.97

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES

STATE OR TERRITORY	AD VALOREM TAX On the value of Real and personal property	Specific Tax On Gross or Net Earnings Revenue or Dividends	On Property owned, not used in operation & Misc.	TOTAL
MINNESOTA		774,823.64	7,851.11	782,774.75
WISCONSIN	73,370.58			73,370.58
NORTH DAKOTA	401,294.56			401,294.56
SOUTH DAKOTA	14,106.75			14,106.75
MONTANA	264,050.61	675.00 License Tax on Gross Pass.Earnge		264,725.61
IDAHO	22,687.69			22,687.69
WASHINGTON	344,346.93			344,346.93
BRITISH COLUMBIA	6,486.44			6,486.44
MANITOBA	2,700.00			2,700.00
TOTAL	1,129,249.56	774,823.64	7,851.11	1,882,600.31

NOTES

The taxes on "VALUE OF REAL AND PERSONAL PROPERTY" shown above are on the railway property used by the St.Paul,Minneapolis & Manitoba, Eastern Ry. of Minn, Dakota and G .N. Ry.,Montana & St.Northern Ry., Crown Boyt Southern, Duluth, Superior & Western Terminal Co. ,Manitoba ,Midland Ry..Brandon Saskatchewan & Hudson Bay Ry. and Seattle and Montana R., operated by this Company. by lease or otherwise, as shown on pages 9 and 11.

The "TAXES ON GROSS EARNINGS " shown is the amount paid or accruing account the State of Minnesota, same being taxes upon the earnings within said state from business handled over the railways leased from the St.P. M. & M. Ry. Co. , Western Ry. Co. of Minnesota,Fork Rapids and Leech Lake Ry. and Minnesota & St. Northern Ry. Co.

While the leases from the St.P.M. & M. Ry., E.Ry of M. and D.S . & W. Tor Co. provide that the St.Northern shall pay all taxes and assessments on the property, earnings or income of those Companies as they become due and payable as portion of the rental for use of the property. such payments are not treated in our accounts as "Rental " but as "Taxes".

ANNUAL REPORT

of the

MINNESOTA and GREAT NORTHERN RY. CO.

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE OF MINNESOTA

For the Year Ending June 30, 1907.

BLURRED

CAPITAL STOCK

DESCRIPTION		Number of shares authorized	Par Value of shares	Total par value authorized	Total amount issued and outstanding.	Dividends Declared during year
CAPITAL STOCK	Common	25,000	100.	2,500,000.00	1,000.00	NONE
	TOTAL				1,000.00	

Manner of payment for capital stock		Total Number Shares issued & outstanding	Total Cash Realized	REMARKS
ISSUED FOR CASH:	Common	10.	1,000.00	
	TOTAL	10	1,000.00	

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RECAPITULATION OF FUNDED DEBT

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets Available for Payment of Current Liabilities		Current Liabilities Accrued to and including June 30.1907	
		Audited Vouchers and Accounts	2.96
BALANCE - CURRENT LIABILITIES	21.40	Wages and Salaries	18.44
TOTAL-	21.40	TOTAL-CURRENT LIABILITIES	21.40
		TOTAL -	21.40

Materials & Supplies on Hand $205.83 (See General Balance Sheet-Page 43)

COST OF ROAD EQUIPMENT AND BETTERMENT IMPROVEMENTS

ITEMS	Expenditures during year		Total Cost to June 30,1906	Total Cost to June 30,1907
	Included in Operating expenses	Not included in Operating Expenses Charged to Construction or equipment		
CONSTRUCTION:				
Engineering		3,205.34	37,179.73	40,385.07
Right of Way and Station Grounds		746.78	41,490.40	42,236.28
Real Estate			1,799.08	1,799.08
Grading		15,494.31	131,376.82	146,871.13
Bridges, Trestles and Culverts		9,130.94	30,311.24	39,442.18
Ties		195.13	72,835.06	73,030.18
Rails			119,256.43	119,256.43
Track Fastenings			17,456.90	17,456.90
Frogs and Switches			766.63	766.63
Ballast		57.75	3,926.77	3,984.52
Track laying and Surfacing		3.50	34,228.71	34,232.21
Fencing Right of Way		745.13	2,327.37	3,072.50
Crossings, Cattle Guards and Signs		71.27	1,387.38	1,458.65
Telegraph Lines			4,573.06	4,573.06
Station Buildings and Fixtures			6,950.99	6,950.99
Shops, Roundhouses and Turntables			2,993.34	2,993.34
Water Stations)				
Fuel Stations)			5,915.61	5,915.61
Miscellaneous Structures			3,964.06	3,964.06
Interest and Discount		3,398.38	5,987.96	9,386.14
General Expenses		1,412.33	28,818.82	30,231.15
TOTAL CONSTRUCTION		34,979.09	570,666.34	607,328.43

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS

Continued

ITEM	Expenditures during Year: Included in Operating Expenses	Expenditures during Year: Not Included in Operating Expenses: Charged to Construction or Equipment	Total Cost to June 30,1906	Total Cost to June 30,1907
TOTAL EQUIPMENT		None		
TOTAL CONSTRUCTION-Page 27		36,699.09	570,646.56	607,525.65
GRAND TOTAL CONSTRUCTION,EQUIPMENT,etc.,		36,699.09	570,646.56	607,525.65
TOTAL COST CONSTRUCTION,EQUIPMENT,etc.--STATE OF MINNESOTA		36,699.09	570,646.56	607,525.65
Cost of Construction per mile of line			13,887.72	14,785.24
Cost of Equipment per mile of Line			- - -	- - - -
TOTAL COST PER MILE OF LINE			13,887.72	14,785.24
TOTAL COST PER MILE OF LINE-MINNESOTA			13,887.72	14,785.24

QUESTION	ANSWER	REMARKS
1.Does the absence of any entry under the heading "Included in Operating Expenses"(Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts.	1. NO	This Company's property being operated by the Gt.Northern., the cost of any improvements and betterments made to the property of the Company and charged to Operating Expenses would appear in the reports of that Company.

BLURRED

COMPARATIVE GENERAL BALANCE SHEET

June 30. 1906 Item	June 30. 1906 Total	ASSETS	June 30, 1907 Item	June 30, 1907 Total	Year ending June 30, 1907 Increase	Year ending June 30, 1907 Decrease
	570,646.38	Cost of Road-P.27		607,525.65	36,879.09	
		Cost of Equipment-P 29				
		Stocks Owned-P.27				
		Bonds Owned, P 29				
		Other Permanent Invts				
	1,745.38	Cash & Current Assets, P. 25				1,745.38
		OTHER ASSETS:				
	129.35	Materials & Supplies		205.62	76.27	
		Profit and Loss P.31(or 33)				
	572,521.09	GRAND TOTAL - - - - - - -		607,731.27	35,209.98	

COMPARATIVE GENERAL BALANCE SHEET

Continued

June 30, 1926			June 30, 1927		Gain during June 30, 1927
Item	Total	Liabilities	Item	Total	Increase / Decrease
1,000.00		Capital Stock-Page 17	1,600.00		
		Funded Debt-Page 21			
11,648.48		Current Liabilities-P 21	31.40		11,611.08
699,672.81		Advances for Construction for which stock may be issued	606,699.97	44,611.04	
		Profit and Loss-Page 21 (or 23)			
976,321.29		GRAND TOTAL	607,731.37	23,309.98	

TAXES AND ASSESSMENTS OF ALL KINDS

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES

PAID BY GREAT NORTHERN RY. CO.

Under the Contract with the Great Northern Railway for operation of this Company's railroad, all taxes chargeable against this Company are paid by the Great Northern Ry. Co., and will be included in the report of that Company.

BLURRE

ANNUAL REPORT

of the

DULUTH TERMINAL RWY. CO.

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE OF MINNESOTA

For the Year Ending June 30th. 1907

CAPITAL STOCK

DESCRIPTION	Number of Shares Authorized	Par Value of Shares	Total Par Value Authorized	Total Amount Issued and Outstanding	Dividends Declared During Year	
					RATE	AMOUNT
Capital Stock	500	100.00	50,000.00	50,000.00	6	3,000.00
TOTAL	500.	100.00	50,000.00	50,000.00		3,000.00

	Number of Shares Issued During year	Cash Realized on Amount Issued during Year	Total Number Shares Issued and Outstanding	Total Cash Realized	Remarks
ISSUED FOR CONSTRUCTION:			500	50,000.00	
TOTAL			500.	50,000.00	

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FUNDED DEBT

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

Class of Bond or Obligation	Time: Date of Issue	Time: When due	Amount of Authorized Issue	Amount Issued	Amount Outstanding	Cash Realized on Amount Issued	INTEREST: Rate	INTEREST: When Payable	INTEREST: Amount accrued during year	INTEREST: Amount paid During Year
FIRST MORTGAGE BONDS	May 1st 1889	May 1st 1909	175,000.00	175,000.00	175,000.00	175,000.00	6	May Nov.	10,500.00	10,500.00
TOTAL: Mortgage Bonds			175,000.00	175,000.00	175,000.00	175,000.00			10,500.00	10,500.00
Miscellaneous Obligations										
Income Bonds.										
GRAND TOTAL			175,000.00	175,000.00	175,000.00	175,000.00			10,500.00	10,500.00

RECAPITULATION OF FUNDED DEBT

Class of Debt	Amount Issued	Amount Outstanding	INTEREST	
			Amount accrued during year	Amount Paid during year
MORTGAGE BONDS--Page 19	175,000.00	175,000.00	10,500.00	10,500.00
TOTAL--	175,000.00	175,000.00	10,500.00	10,500.00

CURRENT ASSETS AND LIABILITIES

Cash and Current Assets Available for Payment of Current Liabilities		Current Liabilities Accrued to & including June 30th.1934	
Due from Solvent Companies and Individuals,	88,253.40		
TOTAL-Cash and Current Assets,	88,253.40		
		BALANCE--Cash Assets,	88,253.40
TOTAL	88,253.40	TOTAL	88,253.40

Materials and Supplies on hand - - - NONE

(See General Balance Sheet-- Page 49)

RECAPITULATION

A. For Mileage Owned by Road making this Report.

ACCOUNT	Total Amount Outstanding	APPORTIONMENT To Railroads	APPORTIONMENT To Other Properties (Page 11)	Amount per Mile of Line: Miles	Amount per Mile of Line: Amount	REMARKS
CAPITAL STOCK—Page 17	50,000.00	50,000.00		1.82	27,473.00	
BONDS—Page 19 ("Grand Total")	175,000.00	175,000.00			96,154.00	
TOTAL	225,000.00	225,000.00		1.82	123,627.00	

B. For MILEAGE OPERATED by Road making this Report (Trackage Rights Excluded)
THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT ------Page 31

NAME OF ROAD	CAPITAL STOCK	FUNDED DEBT	TOTAL	AMOUNT PER MILE OF LINE: Miles	AMOUNT PER MILE OF LINE: Amount
Duluth Terminal Ry.	50,000.00	175,000.00	225,000.00	1.82	123,627.00
GRAND TOTAL -----	50,000.00	175,000.00	225,000.00		123,627.00

COST OF ROAD, EQUIPMENT ,AND PERMANENT IMPROVEMENTS

ITEM	Expenditures during Year Not Included in Operating Expenses Charged to Construction of Equipment .	Total Cost to June 30,1906.	Total Cost to June 30,1907
CONSTRUCTION:			
Right of Way and Station Grounds	400.75		
Interlocking or Signal Apparatus	2543.03		
TOTAL CONSTRUCTION	2943.78	396,541.28	400,485.06

Cannot give this

COST OF ROAD,EQUIPMENT, AND PERMANENT IMPROVEMENTS--Continued

	Expenditures during Year Not Included in Operating Expenses	Total Cost to June 30,1906.	Total Cost to June 30,1907
	Charged to Construction or Equipment		
TOTAL CONSTRUCTION- Page 27--	3,943.78	396,541.28	400,485.06
GRAND TOTAL CONSTRUCTION, EQUIPMENT,etc.	3,943.78	396,541.28	400,485.06
Cost of Construction per mile of line,		217,879.83	220,048.74
TOTAL COST PER MILE OF LINE,		217,879.83	220,048.74

QUESTION

1.Does the absence of any entry under the heading "Included in Operating Expenses"(Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts.

REMARKS

Cost of sundry items of Permanent Improvements and betterments is charged to Operating Expenses , but no attempt is made to separate in our accounts the cost of such items from the cost of ordinary maintenance and repairs?

INCOME ACCOUNT

For Roads Making Operating Reports

Gross Earnings from Operation--Page 35		46,576.09	
Less Operating Expenses ---Page 45		28,147.34	
	INCOME FROM OPERATION,		17,428.75
	TOTAL INCOME		17,428.75
DEDUCTIONS FROM INCOME:			
Interest on Funded Debt Accrued-Page 23		10,500.00	
Interest on Interest-bearing Current Liabilities, etc.,		3,928.75	
	TOTAL DEDUCTIONS FROM INCOME		14,428.75
	NET INCOME		3,000.00
DIVIDENDS, 6 per cent, Stock --Page 27		3,000.00	
	TOTAL		3,000.00

Surplus from Operations of Year ending June 30,1907

EARNINGS FROM OPERATION

	Actual Earnings
EARNINGS FROM OPERATION:	
Rents from Tracks, Yards and Terminals— Page 41.	45,876.09
TOTAL	45,876.09
TOTAL GROSS EARNINGS FROM OPERATION	45,876.09

RENTALS RECEIVED

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS & TERMINALS

Situation of Property Leased	Name of Company using Property Leased	Item	Total
In Duluth	St.Northern Ry.	45,876.09	
		TOTAL	45,876.09

GRAND TOTAL RENTS RECEIVED - - - - - - 45,876.09

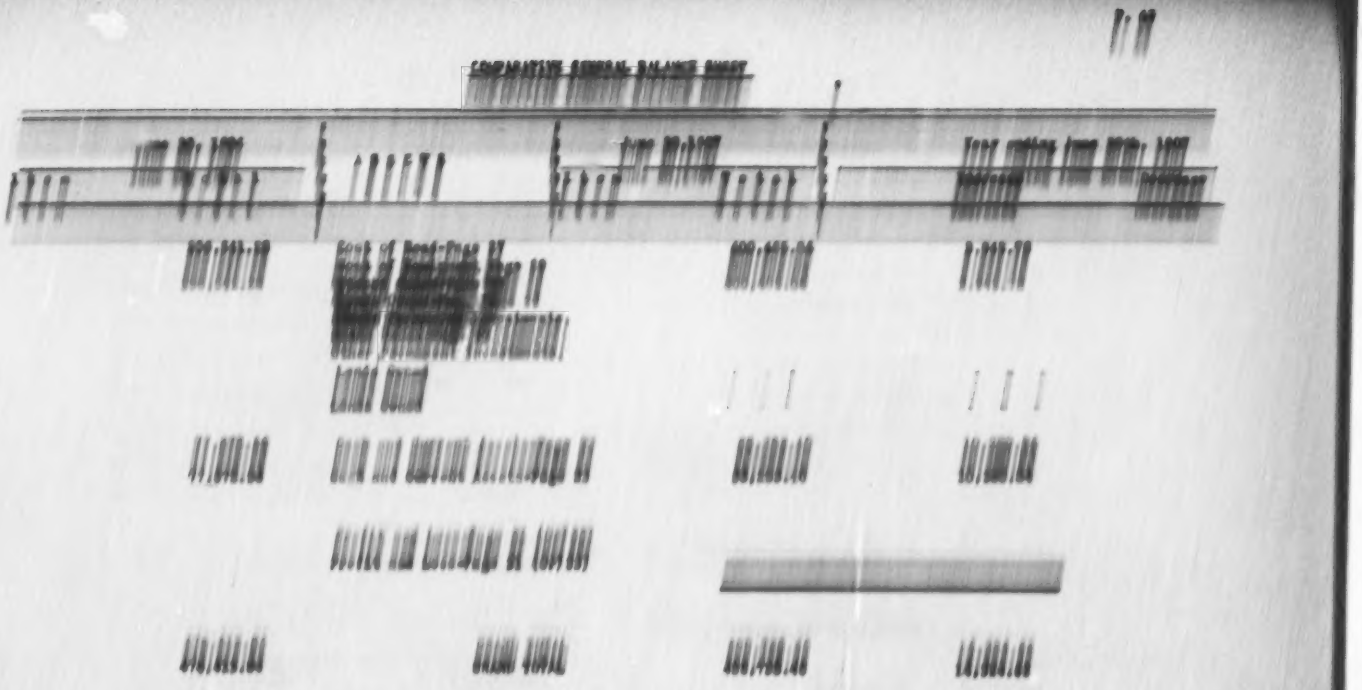
(For entry on Page 35)

OPERATING EXPENSES

ITEM		AMOUNT
MAINTENANCE OF WAY AND STRUCTURES :		
1.Repairs of Roadway,		6,231.96
2.Renewals of Rails		7.77
3.Renewals of Ties		8,611.15
4.Repairs and Renewals of Bridges and Culverts ,		13,111.14
5.Repairs and Renewals of Fences,Road Crossings, Signs , and Cattle Guards,		11.19
6.Repairs and Renewals of Buildings and Fixtures		
7.Repairs and Renewals of Docks and Wharves.		
8.Repairs and Renewals of Telegraph.		199.98
9.Stationery an Printing		
10.Other Expenses		
	TOTAL	28,273.13
MAINTENANCE OF EQUIPMENT:		
Repairs and Renewals of Work Cars		41.71
	TOTAL	41.71
CONDUCTING TRANSPORTATION:		
Station Service		73.60
Station Supplies		3.79
Total Carried Forward- - - - - - - -		77.50

OPERATING EXPENSES--Continued

ITEM		AMOUNT
CONDUCTING TRANSPORTATION--Continued.		
	Total brought forward	17.50
	TOTAL	17.50
GENERAL EXPENSES:		
Insurance.		50.00
Other Expenses		50.00
	TOTAL.	50.00
RECAPITULATION OF EXPENSES:		
Maintenance of Way and Structures.		18,373.13
Maintenance of Equipment .		41.71
Conducting Transportation		17.50
General Expenses.		50.00
	GRAND TOTAL	18,447.34
PERCENTAGE OF OPERATING EXPENSES TO EARNINGS		62.02
RECAPITULATION OF EXPENSES- STATE OF MINNESOTA Maintenance of Way & Structures Maintenance of Equipment Conducting Transportation General Expenses	SAME AS ABOVE	



COMPARATIVE GENERAL BALANCE SHEET-Continued

June 30, 1906		LIABILITIES	June 30-1907		Year Ending June 30, 1907	
Item	Total		Item	Total	Increase	Decrease
50,000.00		Capital Stock-Page 17	50,000.00			
175,000.00		Funded Debt---Page 22,	175,000.00			
		Current Liabilities-Page 23,				
		Real Estate Mortgages,				
1,750.00		Accrued Interest on Funded Debt	1,750.00			
76,123.36		Fund for Renewal of Bridging	86,303.40		10,180.04	
171,541.28		Advances for Construction for which Bonds may be issued	175,485.04		3,943.76	
		Profit and Loss-Page 21 (or 33)				
474,413.64		GRAND TOTAL,	488,738.44		14,324.62	

TRAFFIC AND MILEAGE STATISTICS

ITEM	Columns for Revenue and rates
	Dol. Cts.
TOTAL TRAFFIC:	
Gross Earnings from Operation-Page 35	45,976.09
Gross earnings from operation per mile of road [a] [b]	35,208.60
Operating Expenses - page 45	28,447.34
Operating Expenses per mile of road [a]	15,630.39
Income from operation--Page 31	17,428.75
Income from operation per mile of road [a]	9,578.21

[a] Two (2) decimal figures required. [b] Five (5) decimal figures required

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MILEAGE

A. MILEAGE OF ROAD OPERATED (All Tracks)

Line in Use	Line represented by Capital Stock: Main Line	Line represented by Capital Stock: Branches & Leases	Total Mileage Operated	RAILS: Iron and Steel	RAILS: Steel
Miles of single Track	182		182		182
Miles of yard track and sidings	384		384	384	
TOTAL MILEAGE OPERATED (all Tracks)	566		566	384	182

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track)

State or Territory	Line represented by Capital Stock: Main Line	Total Mileage Operated.	RAILS: Iron	RAILS: Steel
Minnesota	182	182		182
TOTAL MILEAGE OPERATED (Single track)	182	182		182

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track)

State or Territory	Line represented by Capital Stock. Main Line	Total Mileage Owned	RAILS: Iron	RAILS: Steel
Minnesota	182	182		182
TOTAL MILEAGE OWNED (Single Tr)	182	182		182

TAXES AND ASSESSMENTS OF ALL KINDS

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES

NOTE

In the State of Minnesota the railway companies are required to pay tax on gross earnings from operation. The line of this Company is used by other railway companies who pay rental for the use of same, and the only income of this Company is derived from such rental.

The companies using this Company's tracks pay into the State Treasury the earnings' tax for traffic over this road. The rental received is not treated by this Company as "earnings from Operation", but as "Income from other Sources".

PAGES VERTICAL IN BOOK

ANNUAL REPORT

of the

ST. PAUL MINNEAPOLIS AND MANITOBA RY. CO.

to the

RAILROAD AND WAREHOUSE COMMISSION
of the

STATE OF MINNESOTA

For the Year Ending June 30, 1907

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CAPITAL STOCK

DESCRIPTION	Number of shares Authorized	Par Value of Shares	Total Par Value Authorized	Total Amount issued and outstanding	DIVIDENDS declared during Year Rate	Amount
CAPITAL STOCK:	200000	100.	20000000.00	20000000.00	6	1200000.00
					# See Note Page 16	
TOTAL	200000	100.	20000000.00	20000000.00		1200000.00

MANNER OF PAYMENT FOR CAPITAL STOCK	Number of shares issued during yr	Cash Realized on amt issued.	Total number shares issued and outstanding	Total Cash Realized	Remarks
Issued for Cash:			50000	5000000.00	
Issued for Reorganization:			150000	15000000.00	See Statement on Page 2.
TOTAL			200000	20000000.00	

Note. A dividend of 1½ per cent. has been paid quarterly out of the rentals received from the Great Northern Ry.Co.

EXPLANATORY REMARKS

Note 1.

Included in this amount are $10,000,000. sold to stockholders under a resolution of the Board of Directors, passed April 13th, 1883, paid as follows: $1,000,000. in cash and railroad's equipment and other property costing over $9,000,000.

Note. 2

The Pacific Extension Bonds were issued and turned over to the Great Northern Railway as payment on account of construction of line to the Pacific Coast. Of these bonds £2,000,000. are in the treasury of the Great Northern Ry.Co.

Note. 3.

The amount of interest shown for Pacific Extension Bonds, viz: $775,757.54, is account of £ 4,000,000 Bonds, same being in the hands of the public. The balance are in the hands of the Great Northern Ry. and interest is not accrued thereon.

Note 4

The interest on this Company's bonds is paid by the Great Northern Ry. Company under contract for lease of this Company's Railway, dated Feb. 1, 1890.

Note 5

Improvement Bonds were issued and transferred to the Great Northern Ry. Co. in payment for additions and improvements made by that Company to the property owned by this Company, and in payment for line purchased from the Montana & Great Northern Ry.Co. , as shown in last year's Report. Bonds not being in hands of the public, no interest is accrued on same.

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FUNDED DEBT

MORTGAGE BONDS MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

Class of Bond or Obligation	TIME		Amount of Authorized Issue	Amount Issued	Amount Outstanding	Cash Realized on Amount Issued	INTEREST			
	Date of Issue	When due					Rate	When Payable	Amount Accrued during year	Amount paid During year
Second Mortgage Bonds	1879	1909	8000000.00	8000000.00	6853000.00	See Note Page 2	6	Apr 1 Oct 1	280385.00	
Dakota Extension Bond	1880	1910	6000000.00	5878000.00	4853000.00	5688648.65	6	May 1 Nov 1	291500.00	
Consolidated Mortgage Bonds	1888	1938	50000000.00	13344000.00	13344000.00	13344000.00	6	Jan 1 Jul 1	800648.00	
					(See Note 1, Page 18)					
				25970000.00	19250000.00	19284008.13	4½	Jan 1 Jul 1	844250.00	
Montana Extension Mortgage Bonds	1897	1937	25000000.00	21687000.00						
	Less Bonds in hands of Trustee of Pacific Extension. Mortgage in accordance with terms of that mortgage			11503000.00	10135000.00	8975877.50	6	June 1 Dec 1	607400.00	
Pacific Extension Mortgage Bonds	1890	1940 Or	4 6000000. $29090908.09	4 6000000. $29090908.09	(29090909.09 (See Note 2 P 18)	29090909.09	6	Jan 1 Jul 1	775757.54	See Note 3 Page 18
Improvement Bonds	1901	1923	11910000.00	11910000.00	11910000.00	11910000.00	6	Jan Jul	None	See Note 5 Page 18
TOTAL Long Bonds					94988909.09				3821931.54	
GRAND TOTAL					94988909.09				3821931.54	

RECAPITULATION OF FUNDED DEBT

CLASS OF DEBT		AMOUNT OUTSTANDING	INTEREST: Amount accrued during year	INTEREST: Amount Paid During Year
Mortgage Bonds-Page 19		94868909.09	3521932.56	See Note 4,Page 18
Miscellaneous Obligations-Page 19	NONE			
Income Bonds--Page 19				
Equipment Trust Obligations-Page 21				
TOTAL		94868909.09	3521932.56	

CURRENT ASSETS AND LIABILITIES

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30th, 1907	
		Audited Vouchers and Accounts,	29154.97
		Wages and Salaries	1508.20
BALANCE -CURRENT LIABILITIES	30663.17	TOTAL-CURRENT LIABILITIES	30663.17
TOTAL	30663.17	TOTAL	30663.17

(See General Balance Sheet -Page 40)

R E C A P I T U L A T I O N

AT FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

A C C O U N T	Total Amount outstanding	APPORTIONMENT : To Railroads To other Proportion P.11	Amount Per Mile of Line : Miles	Amount
CAPITAL STOCK -PAGE 17	20,000,000.00	20,000,000.00	3975.23	5,161.00
B O N D S-Page 19 ("Grand Total")	94,865,909.09	94,865,909.09		34,680.00
TOTAL	114,865,909.09	114,865,090.09		39,841.00

COST OF ROAD EQUIPMENT AND PERMANENT IMPROVEMENTS

ITEM	EXPENDITURES DURING YEAR				Total Cost to June 30,1906	Total Cost to June 30,1907
	Included in Operating expenses	Not Included in Operating Expenses: Charged to Income Account as Permanent Improvements	Charged to Special Funds	Charged to Construction or Equipment		
CONSTRUCTION :						
1.Engineering				278.92		
.Grading				2608.10		
6.Bridges,Trestles and Culverts				28.06		
T i e s				287.46		
Rails				5238.08		
Track Fastenings				377.19		
Frogs and Switches				546.39		
Ballast				807.74		
Fencing Right of way				1580.33		
Track Laying and Surfacing				2587.08		
Crossing Cattle Guards, and Signs				20.81		
Interlocking or Signal Apparatus				200.01		
Telegraph Lines				89.99		
Shop Machinery and Tools				988.54		
Water Stations				2627.14		
Miscellaneous Structures				17777.54		
TOTAL CONSTRUCTION				36608.84	11967251.87	11970254.42

Cannot Give Details

INCOME ACCOUNT

For Roads not making Operating Reports

INCOME FROM LEASE OF ROAD,		4727993.28	
			4727993.28
Miscellaneous Income--Page 41		27740.40	
INCOME FROM OTHER SOURCES			27740.40
TOTAL INCOME-			4755633.68
Deductions from Income:			
Salaries and Maintenance of Organization,		3980.72	
Interest on Funded Debt Accrued-Page 23		2321932.56	
TOTAL DEDUCTIONS FROM INCOME,			2327913.28
NET INCOME,			1227740.40
DIVIDENDS 6 per cent. Stock-Page 17		1200000.00	
TOTAL			1200000.00
SURPLUS from Operations of Year ending June 30,1907			27740.40
SURPLUS on June 30,1906 (From"General Balance Sheet" 1906 Report)			2092104.13
SURPLUS on June 30,1907 (For entry on"General Balance Sheet" Page 31)			2119844.53

COST OF ROAD EQUIPMENT AND PERMANENT IMPROVEMENTS

Continued.

	Included In Operating Expenses	EXPENDITURES DURING YEAR Not Included in Operating Expenses Charged to Construction or Equipment	Total Cost to June 30,1906	Total Cost to June 30, 1907
		None	Cannot give details	
TOTAL EQUIPMENT		None	9696310.89	9696310.89
TOTAL CONSTRUCTION -Page 27		26402.84	119672781.57	119700284.41
GRAND TOTAL CONSTRUCTION, EQUIPMENT,etc.		26402.84	129370068.46	129396665.30
TOTAL COST CONSTRUCTION NTG- MINNESOTA		9,406.93	Cannot State	Cannot State
Cost of Construction per mile of line			20854.96	20880.38
Cost of Equipment per mile of line,			2469.96	2502.13
TOTAL COST PER MILE OF LINE			23324.92	23390.71

Question	Answer	Remarks
1. Does the absence of any entry under the heading "Included In Operating Expenses"(Page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. No.	This Company's property being leased to the Great Northern Ry. Co., the cost of any improvements and betterments made to the property during the year and charged to Operating Expenses, would be shown in the report for that Company

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RENTALS RECEIVED

RENTS RECEIVED FROM LEASE OF TRACTS, YARDS AND TERMINALS

MISCELLANEOUS INCOME

ITEM	GROSS INCOME	EXPENSES	NET MISCELLANEOUS INCOME
RECEIPTS AND DISBURSEMENTS on account sale of lands lying within the land grant on the Dakota side of the Red River	34259.22	6518.82	27740.40
TOTAL——	34259.22	6518.82	27740.40

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COMPARATIVE GENERAL BALANCE SHEET

June 30,1906 Item	June 30,1906 Total	ASSETS	June 30,1907 Item	June 30,1907 Total	Year Ending June 30,1907 Increase	Year Ending June 30,1907 Decrease
1196773751.57		Cost of Road-Page 27	1197000384.41		26602.84	
9696310.89		Cost of Equipment-Page 28	9696310.89			
1143537.28		Premiums on Bonds exchanged and redeemed	1144196.87		20659.49	
	120513599.84			120560682.17		
	14366.18	Cash and Current Assets				14366.18
		Profit and Loss-Page 31 (or 33)				
	120527966.02	GRAND TOTAL-		120560682.17	33896.15	

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June 30, 1906 Item	June 30, 1906 Total	LIABILITIES	June 30, 1907 Item	June 30, 1907 Total	Year ending June 30,1907 Increase	Year ending June 30,1907 Decrease
	20000000.00	Capital Stock-Page 17		20000000.00		
	95188909.09	Funded Debt---Page 23,		94865909.09		323000.00
	6823.54	Current Liabilities-Page 23,		30663.17	23839.63	
		Sinking F u n d				
7342.64		C a s h	30657.55			38300.19
5928400.00		First Mtg. Bonds	5928400.00			
9997000.00		Consol.Mtg.Bonds	6320000.00		323000.00	
1148537.38		Premium on Bonds redeemed	1164196.87		20659.48	
	13076480.02			13361939.32		
	223649.24	Advances for Construction for bonds may be issued		223506.08		1143.16
	2032104.13	Profit and Loss-Page 21 (or 23)		2059844.53	27740.40	
	130527965.02	GRAND TOTAL----		130560683.17	32896.15	

M I L E A G E

C. Mileage of Line owned By States and Territories

(Single Track)

STATE OR TERRITORY	Line Represented by CAPITAL STOCK — Main Line	Total Mileage Owned	New Line Constructed during Year	RAILS — Iron	RAILS — Steel
MINNESOTA	134025	134025	192	1812	132213
NORTH DAKOTA	111746	111746	548	2583	109163
SOUTH DAKOTA	9925	9925			9925
MONTANA	58301	58301			58301.
IDAHO	8251	8251			8251
WASHINGTON	25575	25575			25575
TOTAL MILEAGE OWNED (Single Track)	387823	387823	741	4395	383128

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COPY OF

ABSTRACTS OF REPORTS TO STATE OF MINNESOTA

BY GREAT NORTHERN RAILWAY CO.

AND OTHER LINES COMPRISING

GREAT NORTHERN SYSTEM IN

MINNESOTA.

1909.

(Endorsed:) Filed May 8th, 1911. Louise B. Trott, Clerk.

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ANNUAL REPORT

of the

GREAT NORTHERN RAILWAY COMPANY

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE of MINNESOTA

For The Year Ending June 30th , 1900

GES

CAPITAL STOCK

DESCRIPTION	No. of shares authorized	Par value of 1 share	Total par value authorized	Total Par value outstanding	Total Par Value held by respondent corporation In treasury	Total par value not held by respondent corporation	Dividends declared during year Rate	Amount
Capital Stock:	2,100,000	100	210,000,000.00	209,970,250.	27,250	209,943,000	7	14,690,670.75
								See Note P. 20
TOTAL	2,100,000		210,000,000.00	209,970,250.	27,250	209,943,00.		14,690,670.75

Purpose of the issue.	Number of shares issued during year	Total number shares outstanding
Issued for Purchase of Railway or other property: Preferred		1,792,501½
Issued for Acquisition of Securities: For 60 shares St.P.M.&M.Ry Stock	75	207,201
TOTAL	75	2,099,702½

NOTE P. 20

DIVIDENDS PAID:

Aug. 1	$209,650,000	1¾	$3,668,875
Nov 1	209,934,900.	"	3,673,860.75
Feb 1	$209,939,900	"	3,673,948.25
May 1	209,942,100	"	3,673,986.75
			14, 690,670.75

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FUNDED DEBT

CLASS OF BOND or OBLIGATION.	Term: Date of Issue	Term: Date of Maturity	Total Par Value Authorized	Total Par Value Outstanding	Total Par Value Held by Respondent Corporation in Treasury	Total Par Value Not Held by Respondent Corporation	Interest: Rate	Interest: When Payable	Interest: Amount Accrued during year	Interest: Amount paid during year
Mortgage Bonds:										
St.P.M.& M.Ry:										
2nd Mtg.	1877	1909	8,000,000	3,366,000	none	3,366,000	6	Apr.-Oct.	$81,871.14	317,081.13
Dakota Ext.	1880	1910	6,000,000	3,035,000	"	3,035,000	6	May -Nov.	216,156.45	228,958.46
Consols,	1883	1933	50,000,000	13,344,000	"	13,344,000	6	Jan.-July	800,640,000	800,940.00
				21,220,000	"	21,220,000	4½	"	946,975.88	928,255.82
				2,621,000	"	2,621,000	4	"	35,983.86	286.67
Montana Ext.	1887	1937	25,000,000	10,165,000	"	10,165,000	4	June-Dec.	407,400.00	404,880.00
Pacific Ext.	1890	1940	£ 6,000,000							
		or	29,090,909.09	29,090,909.09	9,696,969.70	19,393,939.39	4	Jan.-July	776,787.57	776,028.52
Improvement	1902	1922	11,910,000	11,910,000	11,910,000	none			none	
M.Ry.of Minn:										
1st Div.1st Mtg.	1888	1908	5,000,000	3,000	none	3,000		Matured	none	1,525.00
Nov. " "	1898	1948	15,000,000	9,697,000	2,000	9,695,000	4	Apr.-Oct.	320,259.57	297,969.56
Mont.Ctl.Ry:										
1st Mtg.Bonds,	1887	1937	10,000,000	6,000,000	none	6,000,000	6	Jan.-July	360,000.00	360,270.00
				4,000,000	"	4,000,000	5	"	200,000.00	200,175.00
Mpls.Union Ry:										
1st Mtg.	1882	1922	3,000,000	2,150,000	"	2,150,000	6	"	129,000.00	129,000.00
				650,000	"	650,000	5	"	32,500.00	32,500.00
W.& S.P.Ry:										
1st Mtg.	1888	1938	3,646,000	3,646,000	21,000	3,625,000	5	June-Dec.	181,250.00	180,385.00
D.W.& P.Ry:	1888	1936	1,375,000	1,375,000	1,375,000	none			none	
P.R.& L.L.Ry:	1899	1929	500,000	500,000	500,000	"			"	
S.P.& N.Ry:	1889	1939	2,812,000	2,812,000	2,583,000	229,000	6	Jan.-July	13,740.00	13,440.00
Col.& Red Mt.Ry.	1896	1916	291,000	291,000	291,000				none	
TOTAL BONDS ASSUMED,				125,897,909.09	26,378,969.70	99,518,939.39			4,701,636.41	4,669,696.06
N.P.-G.N.-Joint C.B.& Q.								Coupon Bonds Jan.-July		
N.R. Collateral								Registered Bonds Jan.-Apr. July-Oct.		
Trust Bond,			222,400,000							
Issued			215,227,000							
This Co. proportion,				107,613,500	none	107,613,500	4		4,304,535.00	4,304,535.00
TOTAL,				233,511,409.09	26,378,969.70	207,132,439.39			9,006,171.41	8,974,191.06

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	Total Par Value Outstanding	Total Par Value Held by Respondent Corporation In Treasury	Total Par Value Not Held by Respondent Corporation	Interest	
				Amount Accrued during Year	Amount Paid during Year
Mortgage Bonds (assumed by G.N. Ry.),	125,897,909.09	26,378,969.70	99,518,939.39	4,701,538.41	4,669,586.98
Collateral Trust Bonds (G.N. Ry. prop.),	107,613,500	none	107,613,500	4,304,535.00	4,304,535.00
T O T A L,	233,511,409.09	26,378,969.70	207,132,439.39	9,006,071.41	8,974 191.98

Purpose of the Issue.	TOTAL PAR VALUE Issued During Year.	Total Par Value Outstanding.	
Assumed in part payment of Purchase of Railway or Other Property:		125,897,909.09	
Issued for Acquisition of Securities:	500	107,613,500	Issued in payment for 1076135 shares CB&Q stock, G.N.Ry.Co. 1/2 owner.
Issued for Refundment of Securities:	3,548,000		
TOTAL,	3,548,500	233,511,409.09	

RECAPITULATION OF CAPITALIZATION.

Account.	Total Par Value Outstanding	Assignment		Amount per Mile of Line	
		To Railways	To Other Properties	Miles	Amount.
Capital Stock - p. 21,	209,945,000	203,445,000	6,500,000	6,873.87	29,393
Funded Debt - p. 27,	207,130,439.39	99,518,439.39	107,612,000	"	14,479
TOTAL,	417,075,439.39	302,961,439.39	114,112,000		44,078

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1909.	
Cash,	8,144,108.12	Receiver's Certificates,	-
Bills Receivable,	2,564,528.48	Loans and Bills Payable,	-
Due from Agents,	2,185,993.68	Audited Vouchers and Accounts,	3,518,511.43
Due from Solvent Companies and Individuals	1,983,595.82	Wages and Salaries,	2,662,742.87
Traffic Balances due from other other Companies,	421,871.23	Traffic Balances due to other Companies,	541,994.08
Other Cash Assets (excluding "Materials and Supplies")*	95,875.71	Dividends not called for,	2,184.00
		Matured Interest Coupons Unpaid (including Coupons Due July 1),	1,733,600.64
		Miscellaneous,	1,224.00
TOTAL - CASH AND CURRENT ASSETS,	16,395,467.96	TOTAL - CURRENT LIABILITIES,	8,460,257.22
		BALANCE - CASH ASSETS,	8,435,210.74
		TOTAL,	16,395,467.96

* Materials and Supplies on hand, $6,358,443.92

(See General Balance Sheet - p. 43)

EXPENDITURES FOR ADDITIONS AND BETTERMENTS

ACCOUNT	EXPENDITURES DURING YEAR Charged to Capital	TOTAL
Right of Way and Station Grounds	70,043.69	70,043.69
Real Estate	9,331.45	9,331.45
Widening Cuts & Fills	46,414.30	46,414.30
Protection of Banks	53,290.01	53,290.01
Grade Revisions and Changes of Line	367,070.81	367,070.81
Bridges, Trestles and Culverts	256,874.07	256,874.07
Increased Weight of Rail	398,999.18	398,999.18
Ballast	732,446.99	732,446.99
Additional Main Tracks	103,986.23	103,986.23
Sidings and Spur Tracks	175,008.68	175,008.68
Terminal Yards	20,558.32	20,558.32
Fencing Right of Way	18,396.64	18,396.64
Improvement of Over and Under-Grade Crossings	51,783.54	51,783.54
Track Elevation, Elimination of Grade Crossing etc	1,257.16	1,257.16
Interlocking Apparatus	11,638.85	11,638.85
Block and Other Signal Apparatus	15,510.43	15,510.43
Telegraph and Telephone Lines	91,388.95	91,388.95
Station Buildings and Fixtures	145,128.45	145,128.45
Shops Enginehouses and Turntables	98,210.40	98,210.40
Shop Machinery and Tools	65,268.91	65,268.91
Water and Fuel Stations	91,942.63	91,942.63
Dock and Wharf Property	1,109.53	1,109.53
Electric Light and Power Plants	726,381.32	726,381.32
Electric Power Transmission	299,793.93	299,793.93
Snow and Sand Fences and Snow Sheds	28,974.90	28,974.90
Miscellaneous Structures	25,054.02	25,054.02
TOTAL ENTIRE LINE	3,799,257.38	3,799,257.38
TOTAL-STATE OF MINNESOTA	368,615.15	368,615.15

EXPENDITURES FOR ROAD.

Account.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. Charged to Capital	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. Charged to Capital.	TOTAL COST TO June 30, 1908	TOTAL COST TO June 30, 1909
I. ROAD:				
1. Engineering,	169,186.42	7,023.58	234,204.08	410,414.08
2. Right of Way and Station Grounds,	229,213.66	70,043.69	1,302,606.90	1,601,864.25
3. Real Estate,	601.50	9,331.48	324,251.59	334,184.64
4. Grading,	1,354,729.84	638,104.61	4,457,187.73	6,450,022.18
5. Tunnels,	123,384.74		2,167,009.73	2,290,334.47
6. Bridges, Trestles, and Culverts,	261,347.97	392,714.87	2,251,252.18	2,905,315.02
7. Ties,	398,659.44	55,656.25	1,608,442.72	2,062,758.41
8. Rails,	837,828.56	359,689.79	3,618,581.13	4,816,099.48
9. Frogs and Switches,	19,161.32	48,811.99	550,908.96	898,882.27
10. Track Fastenings and Other Material,	172,534.54	45,187.35	939,938.23	1,157,660.12
11. Ballast,	166,219.96	483,247.34	1,287,694.64	1,937,161.94
12. Track Laying and Surfacing,	377,236.08	19,999.22	799,059.52	1,196,294.82
13. ROADWAY Tools,	545.11		287.18	802.29
14. Fencing Right of Way,	50,414.00	18,396.64	213,542.29	282,352.93
15. Crossings and Signs,	4,195.65	51,962.55	37,058.26	93,216.46
16. Interlocking and Other Signal Apparatus,	7,206.89	27,149.28	188,831.67	223,187.84
17. Telegraph and Telephone Lines,	30,708.94	91,365.95	83,845.18	205,920.07
18. Station Buildings and Fixtures,	43,437.82	145,610.17	782,425.40	971,473.39
19. General Office Buildings and Fixtures,			838.44	838.44
20. Shops, Enginehouses, and Turntables,	86,508.43	98,210.40	1,604,280.16	1,788,978.98
21. Shop Machinery and Tools,	3,515.56	66,265.91	882,682.21	951,463.68
22. Water Stations,	131,989.99	81,684.07	1,420,996.20	1,634,640.26
23. Fuel Stations,	25,117.31	10,258.56	78,538.18	113,914.03
24. Grain Elevators,			233,052.02	233,052.02
25. Storage Warehouses,			2,077.47	2,077.47
26. Dock and Wharf Property,		1,109.53	692,727.33	693,836.86
27. Electric-Light Plants,			12.87	12.87
28. Electric-Power Plants,		726,381.32		726,381.32
29. Electric-Power Transmission,		299,793.93		299,793.93
30. Gas-Producing Plants,			7,253.66	7,253.66
31. Miscellaneous Structures,	58,470.53	52,256.93	732,519.78	843,249.24
32. Transportation of Men and Material,	(27,771.79		640,052.99	667,834.78)
Freight Charles Unappertioned,	(54,673.37			54,673.37)
33. Rent of Equipment,	179,074.86		234,619.49	413,894.35
34. Repairs of Equipment,	15,721.41		6,564.08	22,288.49
35. Earnings and Operating Expenses during Construction,	7,034.51		16,679.39	23,713.90
35½. Injuries to Persons,	10,256.68			10,256.68
36. Cost of Road Purchased,	772,091.17		212,523,063.24	212,294,154.41
TOTAL,	5,617,947.68	3,799,287.38	239,899,079.94	249,316,285.18

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

Account.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR Charged to Capital	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. Charged to Capital	TOTAL COST TO June 30, 1908	TOTAL COST TO June 30, 1909
II. EQUIPMENT:				
37. Steam Locomotives,		87,433.57	15,398,961.25	15,311,527.66
38. Electric Locomotives,		163,152.91		163,152.91
39. Passenger-Train Cars,		75,034.58	5,708,795.61	5,780,830.03
40. Freight-Train Cars,		164,528.75	28,706,624.87	28,871,153.32
41. Work Equipment,	1,070.72	22,043.34	1,256,362.89	1,230,389.97
42. Floating Equipment,				
TOTAL.,	1,072.72	296,239.27	51,064,643.90	51,361,953.89
III. GENERAL EXPENDITURES:				
43. Law Expenses,	2,539.18		71.80	2,610.98
44. Stationery and Printing,	209.35		107.17	316.52
45. Insurance,	358.63		663.54	1,022.17
46. Taxes,	55.72		197.25	252.97
47. Interest and Commissions,	214,023.80		449,693.11	663,716.61
48. Other Expenditures,	105.90		41.37	64.53
TOTAL.,	217,292.28		450,691.80	667,983.78
RECAPITULATION.				
I. ROAD	5,617,947.86	3,799,257.38	239,899,079.94	249,316,285.18
II. EQUIPMENT,	1,070.72	296,239.27	51,064,643.90	51,361,953.89
III. GENERAL EXPENDITURES,	217,292.28		450,691.80	667,983.78
TOTAL - ENTIRE LINE,	5,836,310.86	4,095,496.65	291,414,415.34	301,346,222.85
Total Adds. & Imp. and Construction (Equipment not divided between states),	1,215,824.12	366,615.15	CANNOT	STATE
Cost of Road per Mile of Line,			38,494.90	39,148.85
Cost of Equipment per Mile of Line,			8,193.98	8,064.94
General Expenditures per Mile of Line,			72.32	104.86
TOTAL PER MILE OF LINE,			46,761.89	47,317.87
TOTAL PER MILE OF LINE-STATE OF MINNESOTA			CANNOT	STATE

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INCOME ACCOUNT.

(For Companies Making Operating Reports.)

OPERATING INCOME:			
Rail Operations:			
Operating Revenues, p. 45,	53,266,090.02		
Operating Expenses, p. 65 or 65-A,	32,187,702.34		
NET OPERATING REVENUE,		21,078,387.68	
Outside Operations, p. 67-A:			
Revenues,	914,128.88		
Expenses,	664,930.87		
NET REVENUE,		249,198.01	
TOTAL NET REVENUE,		21,327,585.69	
Taxes Accrued, p. 81-A,		2,553,436.14	
OPERATING INCOME,			18,774,149.55
OTHER INCOME:			
Rents Accrued from Lease of Road, p. 71,		6,251.00	
Other Rents - Credits:			
(a) Hire of Equipment - Balance - p. 81,	173,958.63		
(b) Joint Facilities, p. 69,	321,583.01		
(c) Miscellaneous Rents, p. 71,	295,773.36	791,315.00	
Dividends Declared on Stocks Owned or Controlled, pp. 49 & 57,		5,243,900.75	
Interest Accrued on Funded Debt Owned or Controlled, pp. 53 & 57,		91,481.67	
Interest on Other Securities, Loans, and Accounts,		1,085,211.91	
Miscellaneous Income, p. 71,		19,171.29	
TOTAL OTHER INCOME,			7,235,331.62
Gross Corporate Income carried forward,			26,009,481.17

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INCOME ACCOUNT (Concluded)

(For Companies Making Operating Reports.)

Gross Corporate Income brought forward,			26,009,481.17
DEDUCTIONS FROM GROSS CORPORATE INCOME:			
Rents Accrued for Lease of Other Roads, p. 73,		1,666.67	
Other Rents - Debits:			
Joint Facilities, p. 73,	245,290.59		
Miscellaneous Rents, p. 75,	1,438.67	246,729.26	
Separately Operated Properties, Loss, p. 75,		121,723.38	
Interest Accrued on Funded Debt, p. 27,		9,006,071.41	
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,			9,376,190.72
NET CORPORATE INCOME,			16,633,290.45
DISPOSITION OF NET CORPORATE INCOME:			
Dividends Declared:			
In Preferred Stock, p. 21:			
1½% payable Aug. 1, 1908,	5,668,875.00		
1½% payable Nov. 1, 1908,	5,673,860.75		
1½% payable Feb. 1, 1909,	5,673,948.25		
1½% payable May 1, 1909,	5,673,986.75		
TOTAL,		14,690,670.75	
Appropriations to Reserves,		2,789,960.93	
			17,480,631.68
BALANCE FOR YEAR CARRIED FORWARD TO CREDIT OF PROFIT AND LOSS,			847,341.25

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PROFIT AND LOSS ACCOUNT.

DEBIT		CREDIT	
		Balance June 30, 1908,	27,183,091.52
Balance for Year brought forward from Income Account,	847,341.25	Additions for Year:	
		Cash and Securities turned over to the Great Northern Ry. Co. by Lake Superior Co., Ltd.,	7,943,573.96
		Profit from Securities Sold,	548,282.90
		Profit from Property Sold,	369,219.20
		Sundry Adjustments,	11,170.94
Balance Credit, June 30, 1909, carried to Balance Sheet, p. 85,	35,107,997.29		
	35,955,338.52		35,955,338.52

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Operating revenues from Interstate business according to the State of Minnesota, divided on straight mileage basis, see Note 2 p. 44

OPERATING REVENUES
STATE OF MINNESOTA

ACCOUNT	Total Revenues
REVENUE FROM TRANSPORTATION:	
1 Freight Revenue	13,231,215.24
2 Passenger Revenue	1,834,316.65
3 Excess Baggage Revenue	16,010.34
4 Parlor and Chair Car Revenue	7,601.64
5 Mail revenue	208,987.35
6 Express Revenue	113,346.64
8 Other Passenger Train Revenue	149.08
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8)	2,280,971.85
10. Special Service Train Revenue	2,116.50
11. Miscellaneous Transportation Revenue	6,366.63
TOTAL REVENUE FROM TRANSPORTATION	15,625,300.22
12. Station and Train Privileges	4,427.78
19. Miscellaneous	3,139.16
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION	1,288.43
TOTAL OPERATING REVENUES	15,636,878.65
TOTAL OPERATING REVENUES Pp 45 and 45a	20,142,448.80

NOTE

The figures entered on page 45 A as "Operating Revenues from Interstate business according to the State of Minnesota divided on straight mileage basis , have been compiled on that basis in accordance with the order of the Board of Railroad and Warehouse Commissioners, and are given under protest for the reason that this Company claims that basis does not truthfully reflect the amount earned in the State of Minnesota.

RAILWAY STOCKS OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	Par Value of Stocks Owned Not Held in Sinking or Other Funds		Dividends Declared		Valuation of Stocks Owned.
	Unpledged.	Pledged.	Rate	Amount	
Stocks of Respondent Corporation:					
Great Northern Railway Co.	27,250.00		7		27,250.00
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:		NOTE This Company and the N.P.Ry. Co. are to receive the entire authorized Capital Stock of the Spokane,Portland & Seattle Railway Company and $40,000,000 of First Mortgage Bonds in payment for construction. As only a portion of the stock has been issued, and none of the bonds, no adjustment has been made, and the stock issued has not yet been taken upon the books of this Company			
Midland Ry. Co. of Manitoba,	5,000.00				5,000.00
Brandon, Sask. & N.W. Ry. Co.	2,100,000.00				2,100,000.00
Crows Nest Southern Ry. Co.	4,150,000.00				4,150,000.00
Nelson & Ft. Sheppard Ry.	1,500,000.00				742,769.81
Red Mountain Ry. Co.	190,600.00				95,352.25
Vancouver, Vic. & Eastern Ry. & Nav. Co.	50,000.00				Included in Advances for Construction
New Westminster So. Ry. Co.	600,000.00				280,000.00
Duluth Terminal Ry. Co.	400,000.00		3	12,000.00	400,000.00
St.Paul Union Depot Co.		105,600.00	4	4,144.00	103,600.00
Lake Superior T.& T.Ry.Co.	136,800.00				136,800.00
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Minneapolis Western Ry. Co.	250,000.00				250,000.00
Iowa & Great Nor. Ry.	500,000.00				500,000.00
Dul. & Sup. Bridge Co.	200,000.00				200,000.00
Farmers Grain & Shipping Co.	121,085.00				77,850.44
Minnesota Transfer Ry. Co.		7,000.00			7,000.00
Stock $	500,000				
Kootenay Ry.& Nav.Co.,Ltd. Debentures	219,717				1,545,858.04
Victoria & Sidney Ry. Co. $	98,500.00				21,250.00
Victoria Terminal & Ferry Co.	250.00				250.00
C.B.& Q.R.R. 1076135 shrs. G.N.½ owner,		53,806,750.00		4,304,535.00	109,114,809.76
C.B.& Q. R.R.	12,500.00		4	430.00	25,093.54
Preferred,	1,083,350.00				975,015.00
Spokane & Inland Ry.Co. Common,	2,157,350.00				1,078,675.00
Spokane, Portland & Seattle,	12,000,000.00				
TOTAL,		See Note		4,321,109.00	131,617,536.84

RAILWAY FUNDED DEBT OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	Par Value of Funded Debt Owned Not Held in Sinking or Other Funds.	Interest Accrued		Valuation of Funded Debt Owned.
	Unpledged	Rate	Amount	
FUNDED DEBT OF RESPONDENT CORPORATION:				
St.P. M. & M. Ry. Co:				
Pacific Extension Bonds,	9,696,969.70			10,000,000.00
Improvements,	11,910,000.00			11,910,000.00
First Mortgage Bonds of:				
Park Rapids & Leech Lake Ry. Co.	500,000.00			500,000.00
Willmar & Sioux Falls Ry. Co.	21,000.00			21,000.00
Dul. Watertown & Pac. Ry. Co.	1,375,000.00			1,375,000.00
Spok. Falls & Nor. Ry. Co.	2,563,000.00			2,547,567.68
Col. & Red Mountain Ry. Co.	291,000.00			281,186.63
N. Ry. of M., Nor. Div.	2,000.00			2,000.00
TOTAL,	26,378,969.70			26,636,753.51
FUNDED DEBT OF CORPORATIONS WHOSE PROPERTY FORMS A PART OF THE SYSTEM OF RESPONDENT CORPORATION:				
Nelson & Ft. Shepard Ry. Co.	1,293,000.00	6		1,321,449.70
Red Mountain Ry. Co.	217,000.00	6		210,386.62
Dul. Term. Ry. Co.		4	10,500.06	
Dul. Sup. & Western Tel. Co.		4	11,666.67	
FUNDED DEBT OF CORPORATIONS WHOSE PROPERTY DOES NOT FORM A PART OF THE SYSTEM OF RESPONDENT CORPORATION:				
Pacific Express & Pacific Ry. Co.	1,000,000.00	5	50,000.00	900,000.00
Farmers Grain & Shipping Co.	438,000.00			387,900.00
Dul. & Superior Bridge Co:				
1st Mtg. Bonds,	650,000.00			650,000.00
2nd " "	289,000.00			289,000.00
Wis. Central Ry. Term. Bonds,	275,000.00	3½	9,625.00	247,500.00
Minnesota Transfer Ry. Co.	175,000.00	4 & 5	8,130.00	175,000.00
TOTAL,			89,921.67	30,617,890.02

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RAILWAY FUNDED DEBT OWNED - Concluded.

11. Inactive Corporations.

Does respondent own or control any railway securities, either stock or funded debt, through any intermediary which does not make an annual report to the Commission? YES.

Insert below a list of such holdings, if any, giving name of corporation and security held, par value of holdings, and name of intermediary through which control of such securities is established.

Name of Corporation.	Name of Security Held	Par Value of Securities Held	Name of Intermediary
Kootenay Valley Ry. Co.	Stock	1,220,000.00	
	1st Mtg. Bonds	840,000.00	
Bellington & Nelson Ry. Co.	Debentures	720,000.00	Kootenay Ry. & Nav. Co., Ltd.
	Stock	1,000,000.00	
Kaslo & Slocan Ry. Co.	Stock	1,000,000.00	
	1st Mgt. Bonds	750,000.00	
International Nav. & Trading Co.	Stock	100,000.00	
	Debentures	75,000.00	

MISCELLANEOUS STOCKS AND FUNDED DEBT OWNED.

A. Other than Railway Stocks.

Name	Total Par Value of Securities	Dividends Declared Rate	Dividends Declared Amount	Valuation of Securities Owned
Great Northern S.S. Co.	6,000,000.00			6,000,000.00
Northern Steamship Co.	1,500,000.00			500,000.00
Crows Nest Pass Coal Co.	621,700.00	3	18,648.00	1,024,420.93
Somers Lumber Co.	125,000.00			190,000.00
Wash. Bridge Co.	14,500.00			14,000.00
East Wenatchee Land Co.	11,666.67			21,000.00
Cove Ditch Co.	320.00			1.00
Alaska-Yukon-Pacific Exp. Co.	25,000.00			1.00
Sand Coulee Coal Co.	250,000.00			250,000.00
Wash. Imp. & Development Co.	500,000.00			1.00
Skagit Coal Co.	325,000.00			200,000.00
Cottonwood Coal Co.	1,000,000.00	86	860,000.00	1,000,000.00
South Butte Mining Co.	50,000.00			50,000.00
Kalispell Townsite Co.	12,000.00	35	4,200.00	12,000.00
Swan River Logging Co., Ltd.	300,000.00			75,000.00
St. Paul Foundry Co.	78,950.00	12½	9,868.75	78,950.00
Grt. Lakes Towing Co. Prfd.	25,000.00	3½	875.00	18,750.00
Grt. Lakes Towing Co. Common	20,000.00			8,000.00
Northern Land Co.	10,000.00			1.00
Whitefish Townsite Co.	75,000.00	5	3,750.00	25,000.00
Dak. & G.N. Townsite Co.	50,000.00	40	20,000.00	25,000.00
Greville Townsite Co.	100,000.00	5	5,000.00	50,000.00
Kalispell Townsite Stock Redeemed		15	450.00	
Total,			922,791.75	9,542,124.93

B. Other than Railway Funded Debt.

Name	Total Par Value Securities Owned	Interest Received Rate	Interest Received Amount	Valuation of Securities Owned
Northern Land Co.	130,000.00	6	1,560.00	50,000.00
Alaska-Yukon-Pacific Exp. Co.	10,000.00		None	1.00
Total,	160,000.00		1,560.00	50,001.00

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OPERATING EXPENSES - ENTIRE LINE.

(For Large Roads.)

Account.	Amount.	Ratio A. (percent)	Ratio B. (percent)
1. MAINTENANCE OF WAY AND STRUCTURES:			
1. Superintendence,	495,918.74	5.12	1.55
2. Ballast,	74,884.83	.77	.23
3. Ties,	1,534,390.91	15.66	4.14
4. Rails,	282,290.28	2.91	.88
5. Other Track Material,	647,831.07	6.68	2.02
6. Roadway and Track,	4,633,329.60	47.99	14.53
7. Removal of Snow, Sand, and Ice,	242,462.67	2.50	.76
8. Tunnels,	82,287.25	.85	.26
9. Bridges, Trestles, and Culverts,	762,598.35	7.86	2.38
10. Over and Under Grade Crossings,	107,872.69	1.11	.34
11. Grade Crossings, Fences, Cattle Guards, and Signs,	72,234.48	.75	.22
12. Snow and Sand Fences and Snowsheds,	18,807.24	.19	6
13. Signals and Interlocking Plants,	50,481.61	.51	9
14. Telegraph and Telephone Lines,	50,302.35	.52	.16
15. Electric Power Transmission,			
16. Buildings, Fixtures, and Grounds,	521,152.19	5.38	1.63
17. Docks and Wharves,	25,178.09	.26	.08
18. Roadway Tools and Supplies,	118,520.33	1.22	.37
19. Injuries to Persons,	136,635.84	1.41	.43
20. Stationery and Printing,	12,518.26	.13	4
21. Other Expenses,	36,562.35	.38	.11
TOTAL of Accounts 1 to 21,	9,696,758.27	100.00	30.38

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OPERATING EXPENSES - ENTIRE LINE (continued)

Account.	Amount.	Ratio A (percent)	Ratio B (percent)
II. MAINTENANCE OF EQUIPMENT:			
24. Superintendence,	165,647.23	2.71	.52
25. Steam Locomotives - Repairs,	1,920,526.68	31.42	6.00
26. Steam Locomotives - Renewals,	29,263.13	.48	.09
27. Steam Locomotives - Depreciation,	565,337.12	9.25	1.77
28. Electric Locomotives - Repairs,			
29. Electric Locomotives - Renewals,			
30. Electric Locomotives-Depreciation,			
31. Passenger-train Cars - Repairs,	470,987.59	7.71	1.47
32. Passenger-train Cars - Renewals,	12,885.64	.21	4
33. Passenger-train Cars-Depreciation,	137,745.91	2.25	.43
34. Freight-train Cars - Repairs,	1,444,676.73	23.63	4.51
35. Freight-train Cars - Renewals,	26,455.24	.43	.08
36. Freight-train Cars-Depreciation,	1,072,376.35	17.54	3.35
37. Electric Equipment of Cars - Repairs,			
38. Electric Equipment of Cars, Renewals,			
39. Electric Equipment of Cars - Depreciation,			
40. Floating Equipment - Repairs,	311.48	1	
41. Floating Equipment - Renewals,	1,044.48	2	1
42. Floating Equipment - Depreciation,			
43. Work Equipment - Repairs,	147,505.30	2.41	.46
44. Work Equipment - Renewals,	3,901.33	6	1
45. Work Equipment - Depreciation,	45,763.53	.75	.14
46. Shop Machinery and Tools,	77,311.74	1.26	.24
47. Power Plant Equipment,			
48. Injuries to Persons,	35,860.53	.59	.11
49. Stationery and Printing,	7,347.11	.12	2
50. Other Expenses,	6,898.91	.11	2
TOTAL of Accounts 24 to 50,	6,113,319.75	100.00	19.09

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OPERATING EXPENSES - ENTIRE LINE (continued)

Account.	Amount.	Ratio A (percent)	Ratio B (percent)
III. TRAFFIC EXPENSES:			
53. Superintendence	150,263.78	20.38	.47
54. Outside Agencies,	361,659.83	49.04	1.15
55. Advertising,	104,006.44	14.11	.32
56. Traffic Associations,	7,262.48	.97	2
57. Fast Freight Lines,			
58. Industrial and Immigration Bureaus,	38,126.44	5.17	.12
59. Stationery and Printing,	71,016.70	9.63	.22
60. Other Expenses,	5,151.34	.70	2
TOTAL of Accounts 53 to 60,	737,367.01	100.00	2.30
IV. TRANSPORTATION EXPENSES:			
61. Superintendence,	341,517.29	2.36	1.07
62. Dispatching Trains,	172,658.80	1.19	.54
63. Station Employees,	1,677,570.45	11.58	5.24
64. Weighing & Car-Service Associations,	47,284.50	.33	.15
65. Coal and Ore Docks,			
66. Station Supplies & Expenses,	143,988.67	.99	.45
67. Yardmasters and their Clerks,	170,597.97	1.18	.53
68. Yard Conductors and Brakemen,	479,318.06	3.31	1.50
69. Yard Switch & Signal Tenders,	37,992.33	.26	.12
70. Yard Supplies and Expenses,	7,603.08	5	2
71. Yard Enginemen,	305,090.83	2.11	.95
72. Enginehouse Expenses - Yard,	84,406.21	.58	.27
73. Fuel for Yard Locomotives,	503,227.55	3.48	1.57
74. Water for Yard Locomotives,	14,793.25	.10	.05
75. Lubricants for Yard Locomotives,	7,488.02	5	2
76. Other Supplies for Yard Locomotives,	7,229.05	5	2
79. Motormen,			
80. Road Enginemen,	1,738,006.75	12.00	5.43

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OPERATING EXPENSES - ENTIRE LINE (continued)

Accounts.	Amount.	Ratio A (percent)	Ratio B (percent)
TRANSPORTATION EXPENSES (continued):			
81. Enginehouse Expenses - Road,	404,296.30	2.79	1.26
82. Fuel for Road Locomotives,	4,142,180.31	28.60	12.93
83. Water for Road Locomotives,	144,873.54	1.00	.45
84. Lubricants for Road Locomotives,	57,518.66	.40	.18
85. Other Supplies for Road Locomotives,	79,436.48	.55	.25
86. Operating Power Plants,			
87. Purchased Power,			
88. Road Trainmen,	1,750,041.50	12.09	5.47
89. Train Supplies and Expenses,	552,242.86	3.81	1.72
90. Interlockers and Block and Other Signals - Operation,	81,788.89	.56	.26
91. Crossing Flagmen and Gatemen,	19,496.49	.14	.06
92. Drawbridge Operation,	6,412.98	.04	.02
93. Clearing Wrecks,	87,545.85	.60	.27
94. Telegraph and Telephone - Operation,	196,187.87	1.35	.61
95. Operating Floating Equipment,	10,975.22	.08	.03
96. Express Service,			
97. Stationery and Printing,	73,822.58	.51	.23
98. Other Expenses,	26,979.25	.19	.08
99. Loss and Damage - Freight,	408,750.33	2.82	1.28
100. Loss and Damage - Baggage,	11,180.69	.08	.04
101. Damage to Property,	131,409.90	.91	.41
102. Damage to Stock on Right of Way,	96,647.98	.67	.30
103. Injuries to Persons,	440,928.48	3.39	1.37
TOTAL of Accounts 81 to 103 (excepting 77 and 78),	14,481,525.67	100.00	45.22

BLURRED

OPERATING EXPENSES - ENTIRE LINE (continued)

Account.	Amount.	Ratio A (percent)	Ratio B (percent)
V. GENERAL EXPENSES:			
106. Salaries and Expenses of General Officers,	189,815.58	15.03	.47
107. Salaries and Expenses of Clerks and Attendants,	528,742.77	39.38	1.01
108. General Office Supplies and Expenses,	80,872.60	2.09	.7
109. Law Expenses,	146,359.14	14.68	.45
110. Insurance,	258,304.05	25.50	.74
111. Relief Department Expenses,			
112. Pensions,			
113. Stationery and Printing,	54,971.26	5.42	.18
114. Other Expenses,	84,699.35	8.50	.26
TOTAL of Accounts 106 to 114,	996,898.93	100.00	3.38
TOTAL OPERATING EXPENSES - excluding "Joint-Facility" Accounts Nos. 22, 52, 53, 76, 77, 78, 104, 105, 113, and 115 -	32,685,809.23		108.69

NOTE P. 66

The figures entered on page 65 on "Operating Expenses State of Minnesota" are obtained by dividing the total operating expenses upon basis of train mileage in accordance with instructions entered above. They given however under protest for the reason that this Company claims that basis does not truthfully reflect the expenses properly chargeable for the State.

PAGES

OPERATING EXPENSES -ENTIRE LINE (continued).

SUMMARY.

Account.	Item.	Amount.
MAINTENANCE OF WAY AND STRUCTURES:		
Total of Accounts 1 to 21,		9,696,738.27
22. Maintaining Joint Tracks, Yard, and Other Facilities - DR.,	118,298.76	
23. Maintaining Joint Tracks, Yards, and Other Facilities - CR.,	112,657.84	5,640.92
TOTAL MAINTENANCE OF WAY AND STRUCTURES, Ratio to Total Operating Expenses, 30.14%		9,702,379.19
MAINTENANCE OF EQUIPMENT:		
Total of Accounts 24 to 50,		6,113,319.75
51. Maintaining Joint Equipment at Terminals - DR.,	10,910.96	
52. Maintaining Joint Equipment at Terminals - CR.,	12,097.45	1,186.49
TOTAL - MAINTENANCE OF EQUIPMENT, Ratio to Total Operating Expenses, 18.99%		6,112,133.26
TRAFFIC EXPENSES:		
Total of Accounts 53 to 60,	737,367.01	
TOTAL - TRAFFIC EXPENSES, Ratio to Total Operating Expenses, 2.29%		737,367.01
TRANSPORTATION EXPENSES:		
Total of Accounts 61 to 103 (excepting 77 and 78),		14,481,525.67
77. Operating Joint Yards and Terminals - DR.,	215,710.42	
78. Operating Joint Yards and Terminals - CR.,	84,032.18	
104. Operating Joint Tracks and Facilities - DR.,	43,568.90	
105. Operating Joint Tracks and Facilities - CR.,	21,859.52	153,387.82
TOTAL - TRANSPORTATION EXPENSES, Ratio to Total Operating Expenses, 45.47%		14,634,913.49
GENERAL EXPENSES:		
Total of Accounts 106 to 114,		996,858.53
115. General Administration Joint Tracks, Yards, and Terminals, DR.,	5,946.55	
116. General Administration Joint Tracks, Yards, and Terminals, CR.,	1,895.49	4,050.86
TOTAL - GENERAL EXPENSES, Ratio to Total Operating Expenses, 3.11%		1,000,909.39
Ratio of Operating Expenses to Operating Revenues, 60.43%		
OPERATING EXPENSES - STATE OF MINNESOTA.		
I. Maintenance of Way and Structures,	3,225,070.84	
II. Maintenance of Equipment,	2,031,673.10	
III. Traffic Expenses,	245,100.79	
IV. Transportation Expenses,	4,864,645.24	
V. General Expenses,	332,702.28	
TOTAL OPERATING EXPENSES,		10,699,192.25
Ratio of Operating Expenses to Oper. Rev., 55.11%.		

BLURRED

OPERATING EXPENSES - ENTIRE LINE (concluded).

(For Small Roads and Switching and Terminal Companies.)

OPERATING EXPENSES - STATE OF MINNESOTA:

I.	Maintenance of Way and Structures,	3,225,070.84
II.	Maintenance of Equipment,	2,031,673.10
III.	Traffic Expenses,	245,100.79
IV.	Transportation Expenses,	4,864,645.24
V.	General Expenses,	332,702.28
	TOTAL OPERATING EXPENSES,	10,699,192.25

ED PAGES

SUMMARY OF REVENUES AND EXPENSES OF OUTSIDE CORPORATION AND OTHER PROPERTIES

A. OUTSIDE OPERATIONS.

Designation.	Revenues.	Expenses.	Net Revenue or Deficit
Sleeping-Car Service,	527,379.75	249,393.74	277,986.01
Parlor and Chair-Car Service,	37,648.15	28,606.70	9,041.45
Dining and Special Car Service,	291,669.25	340,778.81	49.109.56
Hotels and Restaurants,	57,431.75	46,151.62	11,280.13
TOTAL,	914,128.88	664,930.87	249,198.01

B. OTHER PROPERTIES.

Designation.	Revenues.	Expenses.	Income or Loss.
St. P. M. & M. Ry. - Granted Lands, (*)	186,709.26	14,003.95	172,705.31

(*) The revenues and expenses reported on page 67 are on account Granted Lands acquired from the St.P.M.& M. Ry. The net proceeds from the sale of these lands are under the terms of the mortgage securing them pledged to the redemption of St.P.M.& M.Ry. Consolidated Mortgage Bonds. The balance of such funds now on hand, amounting to $214,186.26, is applicable to the redemption of Bonds, and, pending report from the Trustee of its disposition, is included in the item 'Audited Vouchers and Accounts' on page 29, and the funds actually in the hands of the Trustee being included in the item Cash shown on the same page.

RENTS RECEIVABLE.

I. From Joint Facilities.

(For Companies Making Operating Reports.)

Joint Tracks:

LOCATION.	NAME OF LESSEE.	AMOUNT.
St. Paul and Minneapolis	C.B.& Q. Ry.	45,339.53
" " "	C.St.P.M.& O. Ry.	40,205.80
Northtown Jct. to St. Cloud	Northern Pacific Ry.	19,587.03
Helena to Boulder,	" "	2,726.82
Nesabi Division,	Swan River Logging Co.	1,829.24
Minneapolis,	Minneapolis Eastern Ry.	137.50
"	" Western "	1,413.60
Minnesota Transfer,	Minnesota Transfer Ry.	100.00
St. Anthony Park,	" "	150.00
" "	" "	1,452.29
" "	Wisconsin Central Ry.	979.20
Minneapolis,	Northern Pacific Ry.	215.76
"	Chicago Great Western,	96.29

Joint Yards and Terminals:

St. Paul,	C.B.& Q. Ry.	16,116.02
Mpls. Jct. and Mpls.	"	74,321.20
St. Paul - Minneapolis,	C.St.P.M.& O. Ry.	41,795.17
" - "	Northern Pacific Ry.	41,475.66
Adrian, Wash.	" "	1,068.28
Superior, Wis.	" "	195.60
St. Paul and Minneapolis,	Wisconsin Central,	57,202.82
Devils Lake, N.D.	Farmers Grain & Rh. Co.	235.62
Edinburg, N.D.	Northern Dakota Ry.	105.00
Watertown, S.D.	So. Dak. Central Ry.	467.16
	Total	521,583.01

D PAGES

RENTS RECEIVABLE
(Concluded)

2. From Lease of Road.

ROAD LEASED.	LOCATION	NAME OF LESSEE.	AMOUNT.
	Bellville, Wash. to Samish Lake,	Lake Whatcom Log.Co.	251.00
	Swan River to Miss. River, and Chisholm to Dewey Lake)	Swan River Log.Co.	6,000.00
		TOTAL,	6,251.00

3. Miscellaneous Rents.

DESCRIPTION OF PROPERTY.	LOCATION.	NAME OF LESSEE.	AMOUNT.
Coal Docks	West Superior, Wis.	Coal Companies,	15,099.60
Elevators,	" "	A. D. Thompson,	97,912.93
Land,	St.Paul & Mpls.,Minn.	Coal Companies,	4,857.39
"	Clearwater Jct.	"	240.00
"	St. Anthony Park,	Union Elevator Co.	1,500.00
Right of Way Permits,	Various Points,	Elevator & Fuel Cos.	86,619.00
Right of Way Permits	" "	N.W. Telephone Exchange Co.	1,452.34
Echo Mills,	Spokane, Wash.	Portland Flour Mill Co.	6,920.52
Lunch Rooms, etc.	Sundry Points,	C.H.Shaver News Co.	7,088.71
Buildings,Grounds, etc.,	" "	Sundry,	74,082.87
		TOTAL	295,773.36

MISCELLANEOUS INCOME.

SOURCE OF INCOME.	NET MISCELLANEOUS INCOME.
Cash Discounts,	17,945.55
Miscellaneous,	1,225.74
TOTAL,	19,171.29

BLURRED

RENTS PAYABLE.

1. For Joint Facilities.

(For Companies Making Operating Reports.)

FACILITY LEASED.	LOCATION.	NAME OF LESSOR.	AMOUNT.
Joint Tracks:	St. Paul, Minn.	C.B.& Q.Ry.	9,033.05
	Minneapolis, "	Chicago Great Western	772.00
		C.St.P.M.& O.	67.70
	Nibbing District,	Dul. Mes. & Northern,	1,279.79
Interstate Bridge	over St.Louis River,	Northern Pacific,	39,095.55
	Superior, Wis.	"	18,800.37
	Tilden Jct. to R.L.Falls,	"	2,798.42
	Fargo to Casselton,	"	5,512.47
	Lowell to Delta,	"	5,524.62
	Seattle to Tacoma,	"	40,725.00
Wye Track,	Seattle,	"	2,118.34
Transfer Track,	Spokane, Wash.	"	245.59
" "	Scanlon, Minn.	"	157.90
" "	Duluth, Minn.	"	46.50
	Yankton, S.D.	C.M.& St.P.	303.00
	Kilendale, N.D.	"	5.00
	Yankton, S.D.	C.& N.W.	253.80
	Bemidji, Minn.	M.& I. Ry.	174.00
	Walker, Minn.	M.& I. Ry.	866.65
	Port.la Prairie, Man.	Grand Trunk Pacific,	207.13
Wye Track,	Fernie, B.C.	Morrissey,Fernie & Michel,	258.50
	Fraser River Bridge,	Province of B.C.	15,000.00
	Spokane, Wash.	Oregon R.R. & N. Co.	21.84
	Michel, B.C.	Crows Nest Pass Coal Co.	811.42
Joint Yards and Terminals:	St. Paul, Minn.	St. Paul Union Depot Co.	11,292.36
	Duluth, "	Duluth Union Depot Co.	9,217.15
	Duluth, Minn.	Duluth Ter. Ry. Co.	53,574.21
	Superior, Wis.	Lake Sup. T.& T.Ry.Co.	5,154.38
	Minn. Transfer,	Minn. Trans. Ry. Co.	8,258.16
Freight Facilities,	Duluth, Minn.	Northern Pacific,	3,790.26
"	Cloquet, Minn.	"	208.30
	Helena, Mont.	"	2,828.27
Round House,	Butte, "	"	650.00
Freight Facilities,	Tacoma, Wash.	"	2,305.62
Station "	Carlton, Minn.	"	62.92
" "	Northtown Jct.	"	9.25
Depot "	Butte, Mont.	Butte,Anaconda & Pac.	1,350.00
Turntable,	Sioux Falls, S.D.	Illinois Central,	111.25
	Nelson, B.C.	Canadian Pacific,	2,400.00
		TOTAL,	245,290.59

ED PAGES

RENTS PAYABLE - Concluded.

2. For Lease of Road.

ROAD LEASED.	CASH.	TOTAL.
Dul. Sup. & West. Y. Co. Month of July, 1908,	1,666.67	1,666.67

3. Miscellaneous Rents.

DESCRIPTION of PROPERTY.	LOCATION.	NAME OF LESSOR.	AMOUNT.
Strip Land	Clearwater Jct. Yard,	Mpls. & St. L. Ry.	10.00
" "	Nesabi Range,	Biles Land Co.	300.00
Harbor Area,	Anacortes, Wash.	R. V. Ross,	278.88
Land,	Hennepin & Ramsey Cos.	St.Anthony Elev.Co.	253.00
	Ballard, Wash.	Harvey W. Trout,	550.00
	Sundry,	Sundry,	167.39
		TOTAL,	1,458.67

SEPARATELY OPERATED PROPERTIES.

NAME OF PROPERTY.	LOCATION.	
Kootenay Ry. & Nav. Co.	Bonners Ferry to Int'l Boundary, Int'l Boundary to Kuskanook, B.C. Kaslo,B.C. to Sandon, B.C., and Steamers on Kootenai Lake,	121,725.58
	NET TOTAL,	121,725.58

BLURRED

HIRE OF EQUIPMENT.

(For Companies Making Operating Reports.)

A. Equipment Leased.

NAME OF LESSEE.	NUMBER OF UNITS (Car Days)	AMOUNT.
Red River Lumber Co.		
Flat Cars	37,879	11,363.70
Cabooses	845	379.50
Locomotives	465	5,044.00
TOTAL,		16,796.20

B. Equipment Interchanged.

Kind of Equipment.	Basis of Payment: Number Locomotive Days	Number Car-Days	Compensation: Rate	Amount
I. ACCRUED ON EQUIPMENT BORROWED:				
Freight Locomotives.	925		11.73	10,846.22
Passenger-Train Cars,		2,559	8.48	21,694.11
Freight-Train Cars,		1,872,013	.39	484,107.77
Work Cars,		4,855	1.43	7,930.22
TOTAL,	925	1,859,427		524,568.32
II. ACCRUED ON EQUIPMENT LOANED:				
Freight Locomotives,	4,554		28.39	30,971.86
Passenger-Train Cars,		4,608	3.86	17,792.60
Freight-Train Cars,		1,137,754	.54	618,640.75
Work Cars,		34,466	3.35	48,287.12
TOTAL,	4,554	1,156,828		764,692.33

TAXES AND ASSESSMENTS.

FOR REPORTING COMPANIES OWNED AND PROPRIETARY LINES.

State or Territory.	AD VALOREM TAX. On the Value of Real and Personal Property	SPECIFIC TAX. On Gross or Net Earnings, Revenue or Dividends	On Property Owned Not Used in Operation, and Miscellaneous	TOTAL.
Wisconsin	118,498.28			118,498.28
Minnesota		655,098.59	27,167.48	680,266.07
North Dakota	533,145.93			533,145.93
South Dakota	53,189.57			53,189.57
Montana	424,561.59	900.00		425,461.59
Idaho	31,449.92	150.00		31,599.92
Washington,	669,032.21			669,032.21
British Columbia	51,243.64			51,243.64
Manitoba	12,403.27	3,402.20		9,001.07
TOTAL	1,868,717.87	657,550.79	27,167.48	2,553,436.14

PAGES

THIS PAGE BOUND VERTICAL IN BOOK

COMPARATIVE GENERAL BALANCE SHEET.

June 30. 1908. Item.	June 30. 1908. Total.	ASSETS.	June 30, 1909. Item	June 30, 1909. Total	Year Ending June 30, 1909. Increase.	Year Ending June 30, 1909. Decrease.
99,079.94		Cost of Road, p. 35,	249,316,285.18		9,417,205.24	
54,643.90		Cost of Equipment, p. 37,	51,241,953.89		297,309.99	
50,691.50		General Expenditures, p. 37,	667,953.78		217,292.25	
		Cost of Elevators, p. 82,	2,004,157.83		2,004,157.83	
21,652.78		Stocks Owned, pp. 49,51,57,	121,389,686.77		9,638,033.99	
86,343.13		Funded Debt Owned, pp.53,55,57,	30,867,891.03			2,688,432.18
77,682.24		Other Permanent Investments,	3,770,897.44			406,784.80
95,195.20		Advances for Construction,	40,548,433.83			4,082,670.67
	495,465,196.74			509,891,289.85		
	19,529,471.62	Cash and Current Assets, p.29,		16,695,467.96		2,834,003.66
		OTHER ASSETS:				
17,723.24		Materials and Supplies, p.29,		6,352,443.92		1,965,279.32
50,052.80		Sundries,		861,670.54		188,388.26
	9,287,776.04					
	524,282,444.40	GRAND TOTAL,		533,800,870.27	9,538,425.87	

NOTE

The cost of Elevators shown as separate item for this year accounts for year ending June 30, 1908 was included in item "Other Permanent Investments".

COMPARATIVE GENERAL BALANCE SHEET - Concluded.

June 30, 1908. Item.	June 30, 1908. Total.	LIABILITIES.	June 30, 1909. TOTAL.	Year Ending June 30, 1909. Increase	Year Ending June 30, 1909. Decrease.
	209,962,750.00	Capital Stock, p. 21,	209,970,250.00	7,500.00	
	223,510,909.09	Funded Debt, p. 27,	233,511,409.09	500.00	
	7,718,187.49	Current Liabilities, p. 29,	8,460,257.22	742,069.73	
	262,923.33	Accrued Interest on Funded Debt not yet payable,	238,003.33		24,920.00
	1,036,542.81	Taxes not yet due,	1,059,913.61	23,370.80	
4,844,255.78		Fund for Permanent Improv. and Renewals,	5,546,803.05	702,5 37.27	
115,963.75		Sinking Fund Sup. Coal Docks,	109,389.84		6,573.91
481,884.37		Insurance Fund,	510,699.14	28,814.77	
14,369,984.82	19,812,038.42	Equip. Replace Funds,	16,048,139.77	1,678,155.25	
	17,822,812.47	Cost of Additions & Impr. made to property and paid for from fund for Perm. Improvements and Renewals,	19,934,613.10	2,112,100.63	
	78,000.00	St.P.M.& M. Consol Mtg. Bonds redeemed since Nov.1,07, through operation of Sinking Fund,	78,000.00		
	6,475,469.27	Surplus funds of Proprietary Companies deposited with this Company,	2,414,129.84		4,061,339.43
		Sundries,	411,324.99	411,324.99	
	27,183,091.52	Profit and Loss, p. 43,	35,107,997.29	7,924,905.77	
	534,262,444.49	GRAND TOTAL,	533,800,870.27	9,538,425.87	

TRAFFIC AND MILEAGE STATISTICS - ENTIRE LINE. 98

(For Companies - other than switching and terminal - making operating reports.)

ITEM.	Column for Number Passengers Tonnage, etc.	Columns for Revenue and Rates	
		$	¢ Mills
PASSENGER TRAFFIC:			
1. Number of passengers carried earning revenue,	7,138,742.--		
2. Number of passengers carried one mile,	487,614,988.--		
3. Number of passengers carried one mile per mile of road,	72,471.--		
4. Average distance carried, miles,	68.31		
5. Total passenger revenue,		10,982,935.07	
6. Average amount received from each passenger,			1.53.009
7. Average receipts per passenger per mile,			2.240
8. Total passenger service train revenue,		13,482,295.37	
9. Passenger service train revenue per mile of road,		2,003.79	
10. Passenger service train revenue per train-mile,			1.80.303
FREIGHT TRAFFIC:			
11. Number of tons carried of Freight earning revenue. p. 97,	15,039,964.--		
12. Number of tons carried one mile,	4,806,810,600.--		
13. Number of tons carried one mile per mile of road,	714,408.--		
14. Average distance haul of one ton, miles,	266.45		
15. Total freight revenue,		39,189,439.76	
16. Average amount received from each ton of freight,			2.17.070
17. Average receipts per ton per mile,			.815
18. Freight revenue per mile of road,		5,820.01	
19. Freight revenue per train-mile,			4.10.399

(continued on next page)

TRAFFIC AND MILEAGE STATISTICS - [illegible]
(Consolidated)

(For Companies - other than switching and terminal - making operating reports.)

43—A

I T E M.	Column for Number Passengers Tonnage, etc.	Columns for Revenue and Rates	
		$	¢ Mills
TOTAL TRAFFIC:			
20. Operating Revenues,		33,266,690.02	
21. Operating Revenues per mile of road,		7,916.59	
22. Operating revenues per train-mile,			3.00.575
23. Operating expenses (p. 46 or 46-A),		32,187,702.34	
24. Operating Expenses per mile of road,		4,783.85	
25. Operating Expenses per train-mile,			1.81.632
26. Net Operating Revenue (p. 39),		21,078,387.68	
27. Net Operating Revenue per mile of road,		3,132.74	
28. Average Number of passengers per car-mile,	15.--		
29. Average Number of passengers per train-mile,	84.--		
30. Average Number of passenger cars per train-mile,	5.7[illegible]		
31. Average Number of tons of freight per loaded car-mile,	19.83		
32. Average Number of tons of freight per train-mile,	803.76		
33. Average Number of freight cars per train-mile,	35.08		
34. Average Number of loaded cars per train-mile,	25.41		
35. Average Number of empty cars per train-mile,	9.68		
36. Average Mileage operated during year,	6,728.41		

TRAFFIC AND MILEAGE STATISTICS - ENTIRE LINE (concluded)

(For Companies - other than switching and terminal - making operating reports.)

CLASSIFICATION	ITEM	TOTAL
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE:		
37. Freight locomotive-miles,	9,221,975	
38. Passenger locomotive-miles,	8,539,453	
39. Mixed locomotive-miles,	219,006	
40. Special locomotive-miles,	14,003	
41. Switching locomotive-miles,	3,304,414	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,		21,298,849
43. Nonrevenue service locomotive-miles,		1,953,681
CAR MILEAGE:		
REVENUE SERVICE:		
Freight car-miles:		
44. Loaded,	242,483,913	
45. Empty,	82,900,197	
46. Caboose,	9,108,689	
47. TOTAL FREIGHT CAR-MILES,		334,448,799
Passenger car-miles:		
48. Passenger,	20,847,192	
49. Sleeping, parlor, and observation,	11,340,959	
50. Other passenger-train cars,	19,847,983	
51. TOTAL PASSENGER CAR-MILES,		51,934,134

(Continued on next page)

CLASSIFICATION.	ITEM	TOTAL
CAR MILEAGE: (continued)		
REVENUE SERVICE:		
Special car-miles -		
52. Freight - loaded,	134,039	
53. Freight - empty,	1,981	
54. Caboose,	8,020	
55. Passenger,	19,357	
56. Sleeping, parlor, and observation,	24,679	
57. Other passenger-train cars,	3,373	
58. TOTAL SPECIAL CAR-MILES,		191,449
59. TOTAL REVENUE CAR MILEAGE,		386,690,388
60. Nonrevenue service car-miles,		27,906,667
TRAIN MILEAGE:		
REVENUE SERVICE:		
61. Freight train-miles,	8,733,181	
62. Passenger train-miles,	8,167,427	
63. Mixed train-miles,	808,617	
64. Special train-miles,	12,147	
65. TOTAL REVENUE TRAIN MILEAGE,		17,721,372
66. Nonrevenue service train-miles,		1,927,225

TRAFFIC AND MILEAGE STATISTICS - STATE OF MINNESOTA.

(For Companies - other than switching and terminal - making operating reports.)

ITEM.	Column for Number Passengers, Tonnage, etc.	Columns for Revenue and Rates	
		$	¢ Mills
PASSENGER TRAFFIC:			
1. Number of passengers carried earning revenue,	3,923,790.--		
2. Number of passengers carried one mile,	187,543,514.--		
3. Number of passengers carried one mile per mile of road,	90,443.--		
4. Average distance carried, miles,	56.94		
5. Total passenger revenue,		$3,431,436.27	
6. Average amount received from each passenger,			1.10.857
7. Average receipts per passenger per mile,			1.956
8. Total passenger service train revenue,		4,385,685.83	
9. Passenger service train revenue per mile of road,		2,088.98	
10. Passenger service train revenue per train-mile,			1.44.749
FREIGHT TRAFFIC:			
11. Number of tons carried of freight earning revenue, p. 97,	15,199,082.--		
12. Number of tons carried one mile,	1,993,932,843.--		
13. Number of tons carried one mile per mile of road,	961,687.--		
14. Average distance haul of one ton, miles,	131.15		
15. Total freight revenue,		15,869,975.41	
16. Average amount received for each ton of freight,			1.15.013
17. Average receipts per ton per mile,			.781
18. Freight revenue per mile of road,		7,909.31	
19. Freight revenue per train-mile,			5.12.078

(continues on next page)

TRAFFIC AND MILEAGE STATISTICS - STATE OF MINNESOTA (continued)

(For Companies - other than switching and terminal - making operating reports.)

ITEM.	Column for Number Passengers, Tonnage, etc.	Columns for Revenue and Rates	
		$	¢ Mills
TOTAL TRAFFIC:			
20. Operating Revenues, Page 46		20,142,448.80	
21. Operating revenues per mile of road,		9,714.84	
22. Operating revenues per train-mile,			5.41.917
23. Operating expenses, (p. 48 or 48a)		10,699,198.38	
24. Operating expenses per mile of road,		5,160.29	
25. Operating expenses per train-mile,			1.91.619
26. Net operating revenue, p. 39,		9,443,286.86	
27. Net operating revenue per mile of road,		4,554.55	
28. Average number of passengers per car-mile,	16.--		
29. Average number of passengers per train-mile,	63.00		
30. Average number of passenger cars per train-mile,	3.92		
31. Average number of tons of freight per loaded car-mile,	28.47		
32. Average number of tons of freight per train-mile,	855.80		
33. Average number of freight cars per train-mile,	41.14		
34. Average number of loaded cars per train-mile,	29.18		
35. Average number of empty cars per train-mile,	10.98		
36. Average mileage operated during year,	2,073.37		

TRAFFIC AND MILEAGE STATISTICS - STATE OF MINNESOTA (concluded)

(For Companies - other than switching and terminal - making operating reports.)

CLASSIFICATION.	ITEM	TOTAL
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE:		
37. Freight locomotive-miles,	2,969,926	
38. Passenger locomotive-miles,	2,910,349	
39. Mixed locomotive-miles,	140,551	
40. Special locomotive-miles,	2,071	
41. Switching locomotive-miles,	1,369,893	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,		7,283,189
43. Nonrevenue service locomotive-miles,		189,020
CAR MILEAGE:		
REVENUE SERVICE:		
Freight car-miles -		
44. Loaded,	88,726,130	
45. Empty,	33,212,381	
46. Caboose,	3,150,930	
47. TOTAL FREIGHT CAR-MILES,		125,089,441
Passenger car-miles -		
48. Passenger,	7,877,437	
49. Sleeping, Parlor, and Observation,	3,327,486	
50. Other passenger-train cars,	9,782,518	
51. TOTAL PASSENGER CAR-MILES,		18,487,441

(continued on next page)

CLASSIFICATION.	ITEM.	TOTAL.
CAR MILEAGE: (continued)		
REVENUE SERVICE:		
Special car-miles -		
52. Freight - loaded,	21,936	
53. Freight - empty,	1,330	
54. Caboose,	1,350	
55. Passenger,	9,744	
56. Sleeping, parlor, and observation,	2,150	
57. Other passenger-train cars,	1,797	
58. TOTAL SPECIAL CAR-MILES,		38,249
59. TOTAL REVENUE CAR MILEAGE,		141,615,351
60. Nonrevenue service car-miles,		2,079,837
TRAIN MILEAGE:		
REVENUE SERVICE:		
61. Freight train-miles,	2,900,292	
62. Passenger train-miles,	2,847,760	
63. Mixed train-miles,	140,178	
64. Special train-miles,	2,795	
65. TOTAL REVENUE TRAIN MILEAGE,		5,891,025
66. Nonrevenue service train-miles,		185,046

BLURRED

FREIGHT TRAFFIC MOVEMENT - [redacted] LINE.
(Company's Material Excluded)
(For Companies - other than switching and terminal - making operating reports.)

COMMODITY.	Freight Originating on This Road.	Freight Received from Connecting Roads and Other carriers	TOTAL FREIGHT TONNAGE.	
	Whole Tons	Whole Tons	Whole Tons	Percent.
PRODUCTS OF AGRICULTURE:				
Grain,	2,666,333	525,479	3,192,812	17.70
Flour,	254,431	30,585	285,016	1.58
Other mill products,	127,925	12,074	139,999	.78
Hay,	132,401	5,403	137,804	.76
Tobacco,		684	684	-
Cotton,		11,706	11,706	.06
Fruit and vegetables,	138,664	38,161	176,825	.98
Other products of agriculture,	8,593	9,073	17,676	.10
TOTAL,	3,328,347	634,165	3,962,421	21.96
PRODUCTS OF ANIMALS:				
Live Stock,	157,118	13,659	170,777	.95
Dressed Meats,	8,676	14,136	22,812	.13
Other packing-house products,	310	4,214	4,524	.02
Poultry, Game, and Fish,	19,165	3,374	22,539	.12
Wool,	7,873	244	8,117	.05
Hides and Leather,	6,012	1,307	7,319	.04
Other products of animals,	15,183	5,446	20,629	.12
TOTAL,	214,337	42,580	256,917	1.43

(Continued on next page.)

[redacted] P. [redacted]

Cannot give Freight Traffic Movement [redacted] for the State of Minnesota, therefore report for [redacted] LINE is given.

COMMODITY.	Freight Originating on This Road.	Freight Received from Connecting Roads and Other Carriers	TOTAL FREIGHT TONNAGE.	
	Whole Tons	Whole Tons	Whole Tons	Percent.
PRODUCTS OF MINES:				
Anthracite Coal,	417,729	18,284	436,013	2.42
Bituminous Coal,	1,189,264	125,428	1,314,692	7.29
Coke,	119,530	123,619	243,149	1.35
Ores,	6,966,168	43,735	7,009,903	38.86
Stone, sand, and other like articles,	415,485	20,656	434,141	2.41
Other products of mines,	45,979	26,228	72,207	.40
TOTAL,	9,152,155	357,950	9,510,105	52.73
PRODUCTS OF FORESTS:				
Lumber,	1,267,949	156,463	1,424,412	7.90
Other products of forests,	709,731	78,472	788,203	4.37
TOTAL,	1,977,680	234,935	2,212,615	12.27
MANUFACTURES:				
Petroleum and other oils,	48,116	33,149	81,265	.45
Sugar,	6,936	15,345	22,281	.12
Naval Stores,		35	35	---
Iron, Pig and Bloom,	5,124	2,946	8,070	.04
Iron and steel rails,		55,252	55,252	.30
Other castings and machinery,	9,556	81,710	91,266	.50
Bar and sheet metal,	11,568	56,146	67,714	.38
Cement, brick, and lime,	254,796	119,952	374,748	2.08
Agricultural implements	33,739	24,310	58,049	.32
Wagons, carriages, tools, etc.,	4,477	9,277	13,754	.08
Wines, liquors, and beers,	34,820	21,431	56,251	.31
Household goods and furniture,	3,988	20,795	24,783	.14
Other manufactures,	86,426	123,462	209,888	1.16
TOTAL,	499,546	563,810	1,063,356	5.88
Merchandise,	497,187	132,840	630,027	3.49
Miscellaneous: Other commodities not mentioned above	302,915	101,607	404,522	2.24
TOTAL TONNAGE - ENTIRE LINE,	15,972,067	2,067,907	18,039,964	100.00

BLURRED

MILEAGE - ENTIRE LINE.

(For Companies - other than switching and terminal - making operating reports.)

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	Line Owned		Line of Proprietary Companies	Line Operated under Trackage Rights	Total Mileage Operated	New Line Constructed during Year	Rails	
	Main Line	Branches and Spurs					Iron	Steel
Miles of single track,	6,181.47	89.81	504.82	101.95	6,878.05	283.85	13.15	6,762.90
Miles of second track,	141.06				141.06	9.82		141.06
Miles of third track,	9.28					9.28		9.28
Miles of fourth track,	9.29					9.29		9.29
							Iron & Steel	
Miles of yard track and sidings,	1,676.44	24.25	73.99		1,676.68	59.39	1,676.68	
Fifth track,	2.32				2.32			2.32
Sixth Track,	1.44				1.44			1.44
TOTAL MILEAGE OPERATED (All Tracks),	7,923.30	114.06	578.81	101.95	8,718.12	273.06	13.15 Iron & Steel 1,676.68	6,938.34

B. MILEAGE OF LINE OPERATED - BY STATES AND TERRITORIES. (Single Track).

STATE OR TERRITORY:								
Wisconsin,	37.47			8.88	43.35			37.47
Minnesota,	2,028.48	50.91	1.82	13.56	2,094.79	44.59	13.18	2,068.66
North Dakota,	1,532.78	11.78		19.06	1,563.59			1,544.83
South Dakota,	262.36				262.36			262.36
Montana,	1,448.49	11.03		14.89	1,474.41	102.04		1,459.52
Idaho,	79.66	1.89			81.55	1.99		81.55
Washington,	792.26	14.10		40.65	847.01	2.96		806.36
Manitoba,			161.22	.99	162.21			161.22
British Columbia,			341.78	6.90	348.68	52.27		341.78
TOTAL MILEAGE OPERATED (Single Track),	6,181.47	89.81	504.82	101.95	6,878.05	283.85	13.15	6,762.90

MILEAGE - STATE OF MINNESOTA.

(For Companies - other than switching and terminal - making operating reports.)

A. MILEAGE OF ROAD OPERATED - (All Tracks).

LINE IN USE.	Line Owned		Line of Proprietary Companies	Line Operated under Trackage Rights	Total Mileage Operated	New Line Constructed during Year	Rails	
	Main Line	Branches and Spurs					Iron	Steel
Miles of single track,	2,028.48	50.91	1.82	13.58	2,094.79	44.59	13.15	2068.06
Miles of second track,	77.48				77.48			77.48
Miles of third track,	9.28				9.28			9.28
Miles of fourth track,	9.29				9.29			9.29
Miles of yard track and sidings,	599.45	14.94	3.48		618.23	1.62	Iron & Steel 618.23	
Miles of fifth track,	2.32				2.32			2.32
Miles of sixth track,	1.44				1.44			1.44
TOTAL MILEAGE OPERATED (All Tracks),	2,727.74	65.85	5.66	13.58	2,812.83	46.21	13.15 Iron & Steel 618.23	2167.67

B. MILEAGE OF LINE OPERATED - BY STATES AND TERRITORIES (Single Track).

STATE OF MINNESOTA:	2,028.48	50.91	1.82	13.58	2,094.79	44.59	13.15	2068.06
TOTAL MILEAGE OPERATED (Single Track).	2,028.48	50.91	1.82	13.58	2,094.79	44.59	13.15	2068.06

C. MILEAGE OF LINE OWNED - BY STATES AND TERRITORIES (Single Track).

STATE OF MINNESOTA:	Line Owned		Total Mileage Owned	New Line Constructed during Year	Rails.	
	Main Line	Branches and Spurs			Iron	Steel
STATE OF MINNESOTA:	2,037.79	50.91	2,088.70	44.59	13.15	2,075.55
TOTAL MILEAGE OWNED (Single Track),	2,037.79	50.91	2,088.70	44.59	13.15	2,075.55

BLURRED

MILEAGE - ENTIRE LINE (concluded).

C. MILEAGE OF LINE OWNED - BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED		Total Mileage Owned	New Line Constructed during Year	Rails.		Remarks.
	Main Line	Branches & Spurs			Iron	Steel	
Wisconsin,	37.47		37.47			37.47	Increase of 5.23 miles in mileage in Wisconsin represents line purchased from Duluth, Superior & Western Terminal Co.
Minnesota,	2,037.79	50.91	2,088.70	44.89	13.18	2,075.52	
North Dakota,	1,532.75	11.78	1,544.53			1,544.53	
South Dakota,	262.36		262.36			262.36	
Iowa,	76.58		76.58			76.58	
Montana,	1,448.49	11.03	1,459.52	102.04		1,459.52	
Idaho,	79.66	1.99	81.65	1.99		81.65	
Washington,	792.26	25.48	817.74	2.96		817.74	
TOTAL MILEAGE OWNED (Single Track),	6,267.36	101.19	6,368.55	151.88	13.18	6,358.40	

ANNUAL REPORT

of the

DULUTH TERMINAL RWY. CO.

to the

RAILROAD AND WAREHOUSE COMMISSION

of the

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30,1909.

CAPITAL STOCK

Description	Number of shares Authorized	Par value of one share	Total par value authorized	Total par value outstanding	Total par value held by respondent corporation	Dividends declared during year: Rate	Dividends declared during year: Amount
Capital Stock:	8000	100	800000	400000	400000	3	12000.00
TOTAL	8000		800000	400000	400000		12000.00

Purpose of Issue		Number of shares issued during year	Cash realized or amount issued during year.	Total number of shares outstanding	Total cash realized.	Remarks.
Issued for Cash:	Common					
	Preferred	1750	175000	1750	175000	
Issued for Construction of New Properties:	Common					
	Preferred			500	50000	
Issued to Redeem Company Securities	Common					
	Preferred	1750	175000	1750	175000	
	TOTAL	3500	350000	4000	400000	

FUNDED DEBT.

Class of Bond or obligation	Term: Date of issue	Term: Date of maturity	Total par value authorized	Total par value outstanding	Interest: Rate	Interest: When payable	Interest: Amount accrued during year	Interest: Amount paid during year.
Mortgage Bonds:								
First	May 1 1888	May 1908	175000	None	6	Nov May	8750.00	10500.00
Collateral Trust Bonds:	Bonds redeemed March 19,1900 by issue of $150000 of this Company's Capital Stock.							
Plain Bonds, Debentures, and Notes:								
Income Bonds:								
Miscellaneous Obligations:								
Total.							8750.00	10500.00

BLURRED PA

RECAPITULATION OF FUNDED DEBT.

Class of Debt	Total par value outstanding	Total par value held by respondent corporation.	Total par value not held by respondent corporation.	Interest	
				Amount accrued during year	Amount paid during year
Mortgage Bonds,	NONE			8750.00	10500.00
Collateral Trust Bonds,					
Plain Bonds, Debentures, and notes					
Income Bonds,					
Miscellaneous Obligations,					
Equipment Trust obligations,					
TOTAL				8750.00	10500.00

RECAPITULATION OF CAPITALIZATION:

Account	Total par value outstanding	Assignment: To railways	To other properties	Amount per mile of line: Miles	Amount	REMARKS
Capital Stock- Page 21,	400000	400000				
Funded Debt- page 27,	None					
TOTAL	400000	400000				

RECEIVER'S CERTIFICATES

NONE

CURRENT ASSETS AND LIABILITIES

Cash and current assets available for payment of current liabilities		Current liabilities accrued to and including June 30,1909	
Cash	432.19	Receiver's Certificates,	
Bills Receivable		Loans and Bills Payable	
Due from Agents		Audited Vouchers and Accounts	
Due from Solvent Companies and Individuals	107265.08	Wages and Salaries,	
Traffic Balances due from other Companies		Traffic Balances due to other Companies	
Other Cash Assets (Excluding "Materials and Supplies")		Dividends not called for	
		Matured Interest Coupons Unpaid (Including taxes due July 1.)	
		Miscellaneous,	
TOTAL-CASH AND CURRENT ASSETS	107697.08	TOTAL CURRENT LIABILITIES	
BALANCE CURRENT LIABILITIES		BALANCE CASH ASSETS	107697.27
TOTAL	107697.27		107697.27

1 Materials and Supplies on hand $----- None

(See General Balance Sheet - Page 33)

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT	Expenditures for new lines or extensions during year		Expenditures for additions and betterments during year. (See Page 12)		Total cost to June 30,1919	Total cost to June 30,1920.
	Charged to Capital	Charged to special funds or income	Charged to Capital	Charged to special funds or income		
II. EQUIPMENT						
37.Steam Locomotives						
38 Electric Locomotives			NONE			
39.Passenger-Train Cars						
40.Freight Train Cars						
41.Work Equipment						
42.Floating Equipment						
III. GENERAL EXPENDITURES:						
43.Law Expenses						
44.Stationery and Printing			NONE			
45.Insurance						
46.Taxes						
47.Interest and Commissions.						
48.Other Expenditures						
RECAPITULATION						
I.Road					299367.51	299367.51
II Equipment						
III.General Expenditures.						
Total -ENTIRE LINE					299367.51	299367.51
TOTAL-STATE OF [illegible]						
Cost of Road per Mile of Line					Same as above	
Cost of Equipment per Mile of Line.						
General Expenditures per Mile of Line						
TOTAL PER MILE OF LINE						
TOTAL PER MILE OF LINE-STATE OF [illegible]						

INCOME ACCOUNT
(For Companies making operating reports)

OPERATING INCOME:			
Rail Operations:			
Operating Revenues- Page 46,			
Operating Expenses-Page 49 (or 49 A)	19825.89		
NET OPERATING REVENUE			
NET OPERATING DEFICIT			
Outside Operations-Page 47.A:			
Revenues,			
Expenses			
NET REVENUE			
NET DEFICIT			
TOTAL NET REVENUE			
TOTAL NET DEFICIT			
Taxes Accrued- Page 51.A,			
OPERATING INCOME			
OPERATING LOSS			
OTHER INCOME:			
Rents Accrued from Lease of Road-Page 71,			
Other Rents-Credits:			
(a) Hire of Equipment-Bal.-Page 61,			
(b) Joint Facilities-Page 60,	55876.01		
(c) Miscellaneous Rents-Page 71,			
		55876.01	
Less Operating Expenses		19825.89	
Separately operated Properties,Profit,Page 73			
Dividends Entered on Stocks Owned or Controlled-Pages 48 and 57,			
Interest on Other Securities,Loans,and Accts,			
Miscellaneous Income-Page 71,			
NET INCOME			
Gross Corporate Income Carried Forward			
Gross Corporate Loss carried Forward			

INCOME ACCOUNT- Concluded

Gross Corporate Income brought forward	. . .	. . .	33748.52
Gross Corporate Loss brought forward	. . .	. . .	
DEDUCTIONS FROM GROSS CORPORATE INCOME:			
Rents Accrued for Lease of Other Roads-Page 75. . .			. . .
Other Rents-Debit:			
(a) Hire of Equipment-Balance-P.73.		. . .	. . .
(b) Joint F acilities-Page 73		. . .	. . .
(c) Miscellaneous Rents-Page 75		. . .	. . .
	. . .		
Separately Operated Properties-Loss,P.75	. . .		. . .
Interest Accrued on Funded Debt- Page 37.	. . .	8733.00	. . .
Other Interest,	. . .	2617.48	. . .
Sinking Funds Chargeable to Income	. . .		. . .
Other Deductions-Page 73,	. . .		. . .
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,			11347.48
NET CORPORATE INCOME	. . .	. . .	22400.84
NET CORPORATE LOSS	. . .	. . .	
DISPOSITION OF NET CORPORATE INCOME:			
Dividends Declared:			
(a) On Stock-Page 21			
3 percent payable 6/30/09	12000.00	. . .	. .
percent payable		. . .	. .
percent payable		. . .	. .
percent payable			. .
TOTAL	. . .	12000.00	
(b) On Common Stock- Page 21:			
per cent payable		. .	. . .
per cent payable		. . .	. . .
per cent payable		. . .	. . .
per cent payable			. . .
(c) On Other Securities-Page 21:			
per cent payable	. . .		. . .
		12000.00	. . .
Additions and Betterments Charged to Income-Page 23. .			. . .
Appropriations to Reserves.	. . .	10280.84	
Miscellaneous		. . .	. . .
			10280.84
BALANCE FOR YEAR CARRIED FORWARD TO OF PROFIT AND LOSS	. . .	. . .	NONE

OPERATING EXPENSES- ENTIRE LINE
(For small roads and switching and terminal companies)

Account	Amount	Ratio A. (per cent)	Ratio B. (per cent)
2.MAINTENANCE OF WAY AND STRUCTURES:			
1.Superintendence	156.47	.80	.79
2.Maintenance of Roadway and Tracks.	11910.97	59.82	58.06
3.Maintenance of Track Structures.	7304.86	36.80	37.85
4.Maintenance of Buildings,Docks, and Wharves			
5.Injuries to Persons.	125.00	.65	.63
6.Other Maintenance of Way and Structures Expenses,	43.71	.23	.22
Total of Accts. No. 1 to 6	19540.00	100.00	97.55
11.MAINTENANCE OF EQUIPMENT:			
9.Superintendence,			
10.Locomotive-Repairs,			
11.Cars-Repairs,			
12.Floating Equipment-Repairs			
13.Work Equipment-Repairs,	NONE		
14.Equipment-Renewals,			
15.Equipment-Depreciation,			
16.Injuries to Persons,			
17.Other Maintenance of Equipment Expenses,			
Total of Accounts Nos.9 to 17.			
III.TRAFFIC EXPENSES:			
20.Traffic Expenses			
IV.TRANSPORTATION EXPENSES:			
21.Superintendence and Dispatching Trains	x12		
22.Station Service.	.19	.46	.00
23.Yard Engineers,			
24.Yard Employees,	37.25	88.99	.18
25.Fuel for Yard Locomotives			
26.All Other Yard Expenses.	3.53	8.41	.02
27.All Other Transportation Expenses,	.90	2.15	.00
Total of Accts. Nos.21 to 27, (excepting Nos.27 to 26)	41.84	100.00	.21

V.GENERAL EXPENSES:			
40.Administration	412.53	92.91	2.08
41.Insurance	30.00	6.76	.15
42.Other General Expenses,	1.50	.33	.01
Total of Accts. 40 to 42,	444.03	100.00	2.24
TOTAL OPERATING EXPENSES (Excluding "Joint facility" s 7,8,18,19,27,28,38,39,43,44.)	19[illegible].89	---	100.00

SUMMARY.

Account	Ratio	Item	Amount
MAINTENANCE OF WAY AND STRUCTURES:			
Total of Accts. 1 to 6,		19340.00	
7.Maintaining Joint Tracks,Yards,and Other Facilities,Dr.,			
8.Maintaining Joint Tracks,Yards,and Other Facilities-Cr.,			
TOTAL MAINTENANCE OF WAY AND STRUCTURES			19340.00
Ratio to Total Operating Expenses (per cent)	97.38		
MAINTENANCE OF EQUIPMENT:			
Total of Accounts Nos. 9 to 17,			
18.Maintaining Joint Equipment at Terminals,Dr.,			
19.Maintaining Joint Equipment at Terminals,Cr.,			
TOTAL MAINTENANCE OF EQUIPMENT			
TRAFFIC EXPENSES:			
Account No. 30,			
TOTAL TRAFFIC EXPENSES			
TRANSPORTATION EXPENSES:			
Total of Accounts Nos.31 to 37(excepting Nos.27 and 28)		41.84	
27.Operating Joint Yards and Terminals,Dr.,			
28.Operating Joint Yards and Terminals-Cr.,			
38.Operating Joint Tracks and F acilities-Dr.,			
39.Operating Joint Trks and F acilities-C r.,			
TOTAL TRANSPORTATION EXPENSES:			41.84
Ratio to Total Operating Expenses (per cent)	21		

Account	Item	Amount
GENERAL EXPENSES:		
Total of Accounts Nos. 40 to 42.	444.03	
43.General Administration Joint Tracks, Yards,and Terminals-C r.,		
44.General Administration Joint Tracks. Yards and Terminals-C r.,		
TOTAL GENERAL EXPENSES.		444.03
Ratio to Total Operating Expenses (per cent) .024		
TOTAL OPERATING EXPENSES		18478.88
Ratio of Operating Expenses to Operating Revenues (per cent)		
OPERATING EXPENSES-STATE OF... Massachusetts		
I. Maintenance of Way and Structures.		Same as above
II. Maintenance of Equipment.		
III. Traffic Expenses.		
IV. Transportation Expenses.		
V. General Expenses.		
TOTAL OPERATING EXPENSES		
Ratio of Operating Expenses to Operating Revenues (per cent)		

RENTS RECEIVABLE.
1. From Joint Facilities.
(For Companies Making Operating Reports)

Facility Leased	Location	Name of Lessee	Amount
JOINT TRACKS	In Duluth, Minn.	Gt. Northern Ry.	$3574.21
JOINT YARDS AND TERMINALS:			

NOTE.

The Company's tracks are not leased to the Great Northern Railway Co., for that Company's exclusive use, but may be used by any railway company upon payment of this Company's regularly published tariff of trackage charges.

TOTAL	$3574.21

TAXES AND ASSESSMENTS

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES

Railways in Minnesota are taxed upon their gross earnings from operation. The Companies having trackage rights over this Company's tracks pay taxes on the earnings from business handled over the said tracks.

This Company's revenue not being from operation is not taxable.

COMPARATIVE GENERAL BALANCE SHEET

JUNE 30,1909 Item	JUNE 30,1909 Total	ASSETS.	June 30,1909 Item	June 30,1909 Total	YEAR ENDING JUNE 30,1909. Increase	Decrease.
	299567.81	Cost of Road-Page 15, Cost of Equipment-Page 27, General Expenditures-27 Stocks Owned-Pages 48,51, and 57 Funded Debt Owned-Pages 53,55,57 Other Permanent Investments,		299567.83		
		Lands Owned,				
	98634.24	Cash and Current Assets-Page 29,		107697.17	9063.03	
		Other Assets:				
		Equipment Trusts, Materials and Supplies-Page 29, Sinking,Insurance, and Other Funds- Page 29 Sundries				
		Profit and Loss- Page 43,				
	498202.05	GRAND TOTAL.		507285.08	9063.03	

COMPARATIVE GENERAL BALANCE SHEET- Consolidated.

JUNE 30,1908 Item	JUNE 30,1908 Total	LIABILITIES.	JUNE 30,1909 Item	JUNE 30,1909 Total	Year ENDING JUNE 30,1909 [illegible]	Year ENDING JUNE 30,1909 [illegible]
	80000.00	Capital Stock, Page 21,	400000.00	250000.00		
	175000.00	Funded Debt-Page 27,				175000.00
		Current Liabilities-Page 29,				
	1750.00	Accrued Interest on Funded Debt not yet payable,				1750.00
	96884.84	Fund for Renewal of Bridging	107885.08	10380.94		
	174567.81	Advances for Construction				174567.81
		Profit and Loss- Page 48,				
	498202.05	GRAND TOTAL	[illegible]	9060.03		

ANNUAL REPORT

OF

MINNEAPOLIS WESTERN RAILWAY CO.

TO THE

RAILROADS AND WAREHOUSE COMMISSION.

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30,1909.

CAPITAL STOCK.

Description.	Number of shares authorized	Par value of one share.	Total par value authorized.	Total par value outstanding.	Total par value not held by respondent corporation.	DIVIDENDS DECLARED DURING YEAR. Rate	Amount.
Capital Stock:	2500	100	250000	230000	230000		NONE.
TOTAL.	2500		250000	230000	230000		

Purpose of Issue.		Number of shares issued during year.	Cash realized on amount issued during year.	Total number of shares outstanding.	Total cash realized.	REMARKS.
Issued for cash:	Common,					
	Preferred.					
Issued for Construction of New Properties:	Common,					
	Preferred.			2300	230000	
Issued for Additions and Betterments:	Common,					
	Preferred,					
Issued for Purchase of Lims or other Prpty.	Common,					
	referred,					
Issued for Reorganization:	Common,					
	Preferred.					
	TOTAL			2300	230000	

Class of Bond or Liability.	Term: Date of Issue	Term: Date of Maturity.	Total par value authorized.	Total par value outstanding	Total par value not held by respondent corporation.	Interest: Rate	Interest: When payable.	Interest: Amt. accrued during year.	Interest: Amount paid during year.
Mortgage Bonds:	July 1	July 1							
First	1891	1911	500000	500000	500000	5	Jan. July	25,000.00	25,000.00
Collateral Trust Bonds:									
Main Bonds, Debentures, and notes:									
Income Bonds:									
Miscellaneous Obligations:									
TOTAL.			500000	500000	500000			25,000.00	25,000.00

RECAPITULATION OF FUNDED DEBT.

Class of debt.	Total par value outstanding.	Total par value not held by respondent corporation.	INTEREST: Amount accrued During year.	INTEREST: Amount paid During year.
Mortgage Bonds, Collateral Trust Bonds, Plain Bonds, Debentures, and Notes Income Bonds, Miscellaneous Obligations, Equipment Trust Obligations, TOTAL	500000	500000	25000.00	25000.00
	500000	500000	25000.00	25000.00

Purpose of the Issue.	Total par value issued during the year.	Cash realized on amount issued during the year.	Total par value outstanding.	Total cash realized.	Remarks.
Issued for Cash:					
Issued for Construction of New Properties:			500000	500000	
Issued for additions and betterments					
Issued for Purchase of Railway or Other Property:					
Issued for Acquisition of Securities:					
Issued for Refundment of Securities:					
Issued for Reorganization. TOTAL			500000	500000	

Account.	Total par value Outstanding	Assignment		Amount per mile of line. (see instructions)		Remarks.
		To Keys.	To other properties	Miles	Amount	
Capital Stock- Page 21,	250000	250000				
Funded Debt- Page 27,	500000	500000				
TOTAL	750000	750000				

RECEIVER'S CERTIFICATES.

Date issued	Amount outstanding	Principal		Interest		Rate.
		Amount paid during year	Amount funded or otherwise disposed of	Amount accrued during year.	Amount paid during year.	
NONE						

CURRENT ASSETS AND LIABILITIES.

Cash and current assets available for payment of current liabilities.

Cash	2474.19
Bills Receivable,	
Due from Agents	
Due from Solvent Companies and Individuals	19938.45
Traffic Balances due from other Companies	
Other Cash Assets (Excluding Materials & Supys:)	
TOTAL-CASH AND CURRENT ASSETS,	22412.64
BALANCE-CURRENT LIABILITIES,	47,134.12
TOTAL	69546.76

Materials and Supplies on hand, $1771.66

Current liabilities accrued to and including June 30,1909.

Receiver's Certificates,	
Loans and Bills Payable,	
Audited Vouchers and accounts.	32791.61
Wages and Salaries	1854.95
Traffic Balances due to other Compan'e,	
Dividends not called for,	
(Matured Interest Coupons Unpaid	
(Including Coupons Due July 1,	12550.00
Rents due July 1,	
Miscellaneous,	
TOTAL-CURRENT LIABILITIES,	69.546.76
BALANCE-CASH ASSETS,	
TOTAL	69546.76

(See General Balance Sheet- Page 33.)

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT	Expenditures for new lines or extensions during year.		Expenditures for additions and betterments during year. (See page 23.)		Total cost to June 30,1928.	Total cost to June 30,1929.
	Charged to Capital	Charged to special funds or income	Charged to Capital	Charged to special funds or income.		
XII EQUIPMENT:						
37. Steam Locomotives					12317.38	12317.38
38. Electric Locomotives,						
39. Passenger-Train Cars,						
40. Freight-Train Cars,						
41. Work Equipment,						
42. Floating Equipment,						
TOTAL					12317.38	12317.38
XIII. General Expenditures:						
43. Law Expenses,						
44. Stationery and Printing,						
45. Insurance,			NONE			
46. Taxes,						
47. Interest and Commissions,						
48. Other Expenditures,						
TOTAL						
RECAPITULATION.						
I. Road					728032.10	728032.10
II. Equipment					12317.38	12317.38
III. General Expenditures,						
TOTAL-ENTIRE LINE					740349.48	740349.48
TOTAL-STATE OF						
Cost of Road per Mile of Line,						
Cost of Equipment per Mile of Line						
General Expenditures per Mile of Line,						
TOTAL PER MILE OF LINE						
TOTAL PER MILE OF LINE- STATE OF						

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INCOME ACCOUNT.
(For companies making operating reports.)

OPERATING INCOME:			
Rail Operations:			
Operating Revenues- Page 45,	40884.25		
Operating Expenses- Page 65,(or 65A)	34610.58		
NET OPERATING REVENUE		6285.77	
Outside Operations- Page 67,A:			
Revenues,			
Expenses,			
NET REVENUE			
NET DEFICIT			
TOTAL NET REVENUE		6285.77	
Taxes Accrued- Page 81,A,		1635.84	
OPERATING INCOME			4649.93
OPERATING LOSS,			
MISCELLANEOUS INCOME:			
Rents Accrued from Leases of Road- Page 71			
Other Rents- Credits:			
(a) Hire of Equipment-Balance- Page 81,	NONE		
(b) Joint Facilities- Page 69,			
(c) Miscellaneous Rents- Page 71			
Separately Operated Properties- Profit- Page 75			
Dividends Declared on Stocks Owned or Controlled- Page 49 and 97,	NONE		
Interest Accrued on Funded Debt Owned or Controlled- Pages 53 and 97,			
Interest on Other Securities, Loans, and accounts,			
Miscellaneous Income- Page 71,			
TOTAL OTHER INCOME			4649.93
Gross Corporate Income carried forward,			
Gross Corporate Loss carried forward,			

INCOME ACCOUNT- Concluded.
(For Companies making operating reports.)

Gross Corporate Income brought forward,	. . .	. . .	4649.92
Gross Corporate Loss brought forward	. . .	. . .	
DEDUCTIONS FROM GROSS CORPORATE INCOME:			
Rents Accrued for Lease of Other Roads- Page 75	. . .		. . .
Other Rents- Debits:			
(a) Hire of Equipment- Balance- Page 79,	224.15		
(b) Joint F acilities- Page 73	1501.20	. . .	. . .
(c) Miscellaneous Rents- Page 75	459.01	. . .	. . .
		. . .	. . .
		2184.36	. . .
Separately Operated Properties- Loss- Page 75	. . .		. . .
Interest Accrued on Funded Debt- Page 27,	. . .	29000.00	. . .
Other Interest	. . .		. . .
Sinking Funds Chargeable to Income,	. . .		. . .
Other Deductions- Page 75,	. . .		. . .
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,	. . .	. . .	. . .
NET CORPORATE INCOME,			27184.36
NET CORPORATE LOSS,	. . .	. . .	22534.43
DISPOSITION OF NET CORPORATE INCOME:			
Dividends Declared:			
(a) On Preferred Stock- Page 21:			
per cent payable			
"			
"			
TOTAL			
(b) On Common Stock- Page 21:		NONE	
per cent payable			
"			
"			
TOTAL			
(c) On Other Securities- Page 21:			
per cent payable			
Additions and betterments charged to Income-Page 23			
Appropriations to Reserves, Miscellaneous:			
BALANCE FOR YEAR CARRIED FORWARD TO DEBIT OF PROFIT AND LOSS,			27184.43

PROFIT AND LOSS ACCOUNT.

DEBIT		CREDIT	
Balance June 30,1908,	24461.40	Balance June 30,1908,	
Balance for year brought forward from Income account	22534.43	Balance for year brought forward from Income Account,	
Other Properties- Loss- Page 57.B,		Other Properties- Profit- Page 57.B,	
Deductions for Year:		Additions for Year:	
Dividends Declared out of Surplus:			
(a) On Preferred Stock- Page 21			
Per cent payable			
per cent payable			
(b) On Common Stock- Page 21			
per cent payable			
per cent payable			
(c) On Other Securities- Page 31			
per cent payable			
Balance Credit, June 30,1909, carried to balance sheet- Page 55	46995.83	Balance Debit, June 30,1909, carried to Balance Sheet- Page 53,	46995.83
			46995.83

Operating revenues from business originating and terminating in the State of Minnesota.see Note 1 page 44.

OPERATING REVENUES- STATE OF Minnesota

ACCOUNT	Total Receipts	Total Deductions	Total Revenues.
I. Revenue from Transportation:			
1. Freight revenue,			
2. Passenger Revenue,			
3. Excess Baggage Revenue,			
4. Parlor & Chair Car Revenue,			
5. Mail Revenue,			
6. Express Revenue,	NONE		
7. Milk Revenue (on Passenger Trains)			
8. Other Passenger-Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accts. Nos. 2 to 8)			
9. Switching Revenue,			
10. Special Service Train Revenue,			39452.35
11. Miscellaneous Revenue,			
TOTAL REVENUE FROM TRANSPORTATION (Accts. 1 to 11)			39452.35
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges			
13. Parcel Room Receipts,			
14. Storage- Freight			
15. Storage- Baggage,			
16. Car Service			1395.00
17. Telegraph and Telephone Service,			
18. Rents of Buildings and Other Property,			
19. Miscellaneous,			9.00
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			1040.00
20. Joint Facilities Revenue-Dr.			
21. Joint Facilities Revenue-Cr.			
TOTAL OPERATING REVENUES-ENTIRE LINE,			40896.35

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OPERATING EXPENSES- ENTIRE LINE.
(for small roads and switching and terminal companies)

ACCOUNT	AMOUNT	RATIO A. (per cent)	RATIO B. (per cent)
I. MAINTENANCE OF WAY AND STRUCTURES:			
1. Superintendence			
2. Maintenance of Roadway and Tracks,	2917.32	69.65	11.59
3. Maintenance of Track Structures	1681.45	29.90	4.97
4. Maintenance of Buildings, Docks & Wharves	36.11	.47	.08
5. Injuries to persons,			
6. Other Maintenance of Way and Structures Exp.	.98	.02	--
Total of Accts. No. 1 to 5,	$4633.90	100.00	16.64
II. MAINTENANCE OF EQUIPMENT:			
9. Superintendence,			
10. Locomotives- repairs	4353.06	72.85	12.88
11. Cars- Repairs,	1004.21	16.81	2.97
12. Floating Equipment- Repairs			
13. Work Equipment- Repairs,			
14. Equipment- Renewals,			
15. Equipment- Depreciation,	615.84	10.31	1.82
16. Injuries to Persons,			
17. Other Maintenance of Equipment Expenses,	2.00	.03	.00
Total of Accts. No. 9 to 17	$5975.11	100.00	17.67
III. TRAFFIC EXPENSES:	NONE	NONE	NONE
IV. TRANSPORTATION EXPENSES:			
21. Superintendence and Dispatching Trains	12.00	.06	.04
22. Station Service,	2622.39	12.05	7.76
23. Yard Enginemen	2780.90	12.77	8.23
24. Other Yard Employees,	5324.12	36.23	24.62
25. Fuel for Yard Locomotives,	5345.42	24.55	15.81
26. All Other Yard Expenses,	515.88	2.37	1.53
34. Injuries to Persons,	836.05	3.84	2.47
36. Other Casualties,	126.42	.58	.37
37. All Other Transportation Expenses,	1207.94	5.55	3.75
Total of Accts. Nos. 21 to 39 (excepting 27 to 32)	$21791.32	100.00	64.40

Concluded.
For Small Roads and Switching and Terminal Companies

ACCOUNT	AMOUNT	RATIO A. (per cent)	RATIO B. (per cent)
V. GENERAL EXPENSES:			
40. Administration	300.00	68.69	.88
41. Insurance	57.20	13.10	.17
42. Other General Expenses	79.55	18.21	.24
TOTAL	436.75	100.00	1.29
TOTAL OPERATING EXPENSES (Excluding "Joint Facility" Accts.Nos.7,8,18, (19,27,28,38,39,43,44)	33837.06		100.00

SUMMARY

ACCOUNT	ITEM	AMOUNT	IT
MAINTENANCE OF WAY AND STRUCTURES:			
Total of Accounts Nos. 1 to 6	5623.90		
7. Maintaining Joint Tracks,Yards and Other Facilities-Dr.	300.00		
8. Maintaining Joint Tracks,Yards and Other Facilities-Cr.			
TOTAL- MAINTENANCE OF WAY & STRUCTURES		5923.90	
Ratio to Total Operating Expenses (Per cent) - - - - - - - - - 17.12			
MAINTENANCE OF EQUIPMENT:			
Total of Accounts Nos. 9 to 17	5875.11		
18.Maintaining Joint Equipment at Terminals- Dr.			
19.Maintaining Joint Equipment at Terminals- Cr.			
TOTAL-MAINTENANCE OF EQUIPMENT		5875.11	
Ratio to Total Operating Expenses (Percent.) - - - - - - - - - 17.26			
TRAFFIC EXPENSES:			
Account No. 20	NONE		

ACCOUNT	ITEM	AMOUNT
TRANSPORTATION EXPENSES:		
Total of Accounts Nos. 21 to 37 (Excepting Nos. 27 and 28)	21771.32	
27. Operating Joint Yards and Terminals-Dr.		
28. Operating Joint Yards and Terminals--Cr.		
36. Operating Joint Tracks and Facilities-Dr.	503.50	
39. Operating Joint Tracks and Facilities-Cr.		
TOTAL TRANSPORTATION EXPENSES,		22274.82
Ratio to Total Operating Expenses (per cent.) - - - - - -64.36		
GENERAL EXPENSES:		
Total of Accounts Nos. 40 and 42	436.73	
43. General Administration Joint Tracks, Yards and Terminals-Dr None		
44. General Administration Joint Tracks, Yards and Terminals-Cr. "		
TOTAL GENERAL EXPENSES		436.73
Ratio to Total Operating Expense (per cent.) 1.26		
TOTAL OPERATING EXPENSES		34610.58
Ratio of Operating Expenses to Operating Revenues (Per cent)84.83		
OPERATING EXPENSES-STATE OF MINNESOTA		
I. Maintenance of Way & Structures ,		
II. Maintenance of Equipment ,		
III. Traffic Expenses		
IV. Transportation Expenses ,		
V. General Expenses,		Same as above.
TOTAL OPERATING EXPENSES,		
Ratio of Operating Expenses to Operating Revenues (per cent.)		

RENTS PAYABLE.
1. For Joint Facilities.
(For Companies making operating reports)

FACILITY LEASED	LOCATION	NAME OF LESSOR	AMOUNT
Joint Tracks:			
	Minneapolis	Ct. Northern Ry. Co.	300.00
Joint Yards and Terminals:			
Right of Way	in Minneapolis, Minn	Ct. Northern Ry. Co.	1201.20
		TOTAL	1501.20

RENTS PAYABLE
3. Miscellaneous Rents

DESCRIPTION OF PROPERTY	LOCATION	NAME OF LESSOR	AMOUNT.
Round House etc.	Mpls. Jct., Minn.	Gt. Northern Ry.	409.00
Strip of land	Minneapolis	Minneapolis Rolling Co.	50.01
		TOTAL	459.01

HIRE OF EQUIPMENT.
(For Companies making operating reports)
A. Equipment Leased.

KIND OF EQUIPMENT	NAME OF LESSEE	NUMBER OF UNITS	AMOUNT
RENTS ACCRUED RECEIVABLE:			
Locomotive	Gt. Northern Ry. Co. (Jan)	6	90.00
	TOTAL		90.00
RENTS ACCRUED PAYABLE:			
Locomotive	Gt. Northern Ry (Days)	6	90.00
	TOTAL		90.00

B. EQUIPMENT INTERCHANGED.

KIND OF EQUIPMENT	BASIS OF PAYMENT				COMPENSATION	
	Number Locomotive Days	Number Locomotive Miles	Number Locomotive Car Days	Number Car Miles	RATE	AMOUNT
1. ACCRUED ON EQUIPMENT						
Borrowed:						
Passenger Locomotives,						
Freight Locomotives						
Work Locomotives						
Passenger Trains						
Freight-Train Cars,			486		20-23-60	224.18
Work Cars,						
TOTAL			486			224.18

HIRE OF EQUIPMENT- Concluded

C. PRIVATE CARS.

NONE

RECAPITULATION OF HIRE OF EQUIPMENT.

ACCOUNT		Amount Receivable	Amount Payable
A. Equipment Leased		90.00	90.00
B. Equipment Interchanged,			224.15
	TOTAL,	90.00	314.15
	BALANCE	224.15	

TAXES AND ASSESSMENTS.

A. For reporting Company's owned and proprietary lines.

State or Territory	Adveloren Tax	Specific Tax			On property owned not used in operation, and miscellaneous	Internal Rev. U.S.G evnt.	TOTAL
		On Stocks bonds, Loans etc.	On Gross or Net earnings, Revenue or Dividends	On Traffic or some physical quality of Oper., or on privilege			
Minnesota			1635.84				1635.84
	TOTAL		1635.84				1635.84

JUNE 30,1908 Item	JUNE 30,1908 Total	ASSETS.	JUNE 30,1909 Item	JUNE 30,1909 Total	YEAR ENDING JUNE 30,1909. Increase	YEAR ENDING JUNE 30,1909. Decrease
	739880.10	Cost of Road-Page 35		739880.10		
	12317.38	Cost of Equipment- Page 37		12317.38		
		General Expenditures-37				
		Stocks Owned- Pages 49,51 and 57				
		Funded Debt Owned- Pages 53, 55 and 57,				
		Other Permanent Investments,				
		Lands Owned,				
	22756.89	Cash and Current Assets- Page 29,		22412.64		334.25
		OTHER ASSETS:				
		Equipment Trusts,				
	1837.26	Materials and Supplies, Page 29,		1771.64		65.62
		Sinking, Insurance and Other Funds- Page 29,				
		Sundries,				
	24461.48	Profit and Loss- Page 43,		44995.63	22534.43	
	801243.06	GRAND TOTAL		823347.61	22104.56	

COMPARATIVE GENERAL BALANCE SHEET- Concluded.

JUNE 30,1908 Item	JUNE 30,1908 Total	LIABILITIES.	JUNE 30,1909 Item	JUNE 30,1909 Total	YEAR ENDED JUNE 30,1909. Increase	YEAR ENDED JUNE 30,1909. Decrease.
	$80000.00	Capital Stock, Page 21,		$80000.00		
	300000.00	Funded Debt- Page 27,		300000.00		
	47823.80	Current Liabilities- Page 29,		69546.76	21722.97	
		Accrued Interest on Funded Debt, Not yet payable,				
	919.70	Taxes Not due		711.55		208.15
	2463.46	Fund for Replacement of Equipment in Service		2879.30	415.84	
		Profit and Loss- Page 43,				
	$431743.06	GRAND TOTAL		$533946.71	$22164.81	

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ITEM	Column for Number of Cars	Column for Revenue and Rates.
CAR STATISTICS.		
SWITCHING TRAFFIC FREIGHT:		
1. Number of Cars Handled Earning Revenue- Loaded	26135	
2. Number of Cars Handled Earning Revenue- Empty		
3. Number of Cars Handled at Cost for Tenant Companies		
4. Number of Cars Handled not Earning Revenue- Loaded		
5. Number of Cars Handled Not Earning Revenue- Empty.	27835	
6. TOTAL NUMBER OF CARS HANDLED	53970	
SWITCHING TRAFFIC-PASSENGER		
7.		
8.		
9.		
10. NONE		
11.		
12.		
TERMINAL OPERATIONS-FREIGHT.		
13.		
14. NONE		
15.		
TERMINAL OPERATIONS- PASSENGER		
16.		
17. NONE		
18.		
SUMMARY:		
19. Total Number of Cars Handled Earning Revenue-Loaded	26135	
20. Total Number of Cars Handled Earning Revenue-Empty		
21. Total Number of Cars Handled not Earning Revenue-Loaded		
22. Total Number of Cars Handled not Earning Revenue-Empty.	27835	
23. Total Number of Cars Handled at Cost for Tenant Companies.		
24. TOTAL NUMBER OF CARS HANDLED	53970	

REVENUE AND EXPENSE STATISTICS.

SWITCHING TRAFFIC AND TERMINAL OPERATIONS:	No. of Cars	Revenue Rates
25. Revenue from Revenue Cars.		29491.26
26. Other Revenue		1604.00
27. TOTAL REVENUE		60836.34
28. Average Revenue per Revenue Car(3 decimal figures required)	.732	
29. Amount Received from Tenant Companies,		None
30. Average Amount Received per Car from Tenant Companies	None	"
31. Operating Expenses		34610.56
32. Average Expenses per Car Handled	.841	--

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United States of America.

Circuit Court of the United States, District of Minnesota. Third Division.

I, Louise B.Krott, Clerk of said Circuit Court, do hereby certify and return to the Honorable, The Supreme Court of the United States, that the foregoing, containing 2076 pages of testimony, numbered consecutively from 1 to _____ inclusive and one volume of Complainants' Exhibits containing _____ pages and one Volume of Defendants Exhibits containing 63 pages, is a true and complete transcript of the printed testimony and complainants and defeddants exhibits and abridged reports to the State of Minnesota for the years 1907, 1908 and 1909 and of the whole thereof, as appears from the original records and files of said Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May A.D.1911.

Louise B Krott

Clerk.

AGES

ANNUAL REPORT

OF

The Great Northern Ry. Co.

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1908.

The larger portion of the company's capital stock has been issued either in exchange for properties and securities or with the purpose of using the cash realized from such stock in acquiring specified securities. One or two resolutions authorizing issuance of stock have provided that the proceeds were to be used, in addition to acquiring securities, in purchasing additional equipment, and, in one case, for making certain improvements to the road. Under the authority given in resolutions to acquire securities to be issued by certain companies building new lines, the company made cash advances to said companies in anticipation of the future issuance of their securities.

As of July 1, 1907, the company purchased the lines referred to on page 87, and in payment therefor surrendered a large portion of the securities which had either been acquired with its own capital stock or with proceeds therefrom, and also wrote off amounts which had been advanced for construction purposes with the intention of eventually receiving securities to cover said advances, as above mentioned.

Of the securities originally acquired with the capital stock or the proceeds thereof, there remained in the company's hands on June 30, 1908, securities that had cost $30,712,603.28, and that amount has been entered on page 21 against the item "Issued for Acquisition of Securities". The remainder of the proceeds of capital stock had practically been used for the "Purchase of Railway or Other Property", and the amount has been entered against that item on page No. 21.

The amounts that have been entered in the column headed "Number of Shares Issued during the Year", are simply the number of shares of stock actually issued during the year, and have no relation to the amounts shown in column headed "Total Number of Shares Outstanding".

For the reasons stated above, it is practically impossible to make a statement of "Total Cash Realized" from capital stock issued, sub-divided by "Purpose of the Issue", as in some cases securities were acquired in exchange for Great Northern stock, and which securities were afterwards used in paying for railway property purchased and then canceled by the issuing company.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	AMOUNT.
Capital Stock: ~~Common,~~	2100000	100	210000000	209962750	761250		209201500	7%	10471819.75
~~Preferred,~~									
TOTAL,	2100000		210000000	209962750	761250		209201500		10471819.75

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common, Preferred,					Cash realized from subscription to the $60,000,000 issued as of May 1, 1902
Issued for Construction of New Properties:	Common, Preferred,					Year June 30 1907 $38,616,212.00 Year June 30 1908 21,383,788.00 $60,000,000.00
Issued for Additions and Betterments:	Common, Preferred,					
Issued for Purchase of Railway or Other Property:	~~Common,~~ ~~Preferred,~~	600000	$ 25383788	1792501/2		
Issued for Acquisition of Securities:	~~Common,~~ ~~Preferred,~~	3852 1/2		307126		3852 1/2 shares issued during the year Issued 3333 shares J.P.M. Co. Ry Stock
Issued for Reorganization:	~~Common,~~ ~~Preferred,~~					
	TOTAL,	603852 1/2		2099627 1/2		

EXPLANATORY REMARKS.

Note 1. Montana Extension Bonds

Total Issue.	$ 21.687.000
Less	
Bonds in the hands of Trustee of Pacific extension Mtg. in accordance with terms of that Mtg.	11.502,000
Bonds Outstanding	$ 10,185,000

Note 2. Interest has not been accrued upon Bonds which are held in the Treasury of this Co. and Listed on Page 23. Of the interest accrued upon Bonds outstanding, in the hands of the public, there has been charged

to Rental = Page 73. -	$ 1.171.245.85
& to Income Account = Page 41 =	7.950.385.08
	$ 9.121.630.93

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM		TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION.		TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST.			
	Date of Issue.	Date of Maturity.			IN TREASURY.	IN SINKING OR OTHER FUNDS.		RATE.	WHEN PAYABLE.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
St P M & M Ry											
2nd Mtg Bonds	1879	1909	8000000	5660000			5660000	6	Apl-Oct	367394 49	365940 00
Sink Fnd "	1880	1910	6000000	4222000			4222000	6	May-Nov	281722 33	281820 00
Consolidated "	1883	1933	50000000	13344000			13344000	6	Jan-July	800640 00	801360 00
				20362000			20362000	7	"	1877581 00	1870885 00
Montana Ext	1887	1937	25000000	10185000	See next page		10185000	4	Jan-May	407400 00	408260 00
Pacific "	1890	1940	26000000								
			29070907	29070907	9696969		19373938	4	Jan-July	775757 56	775214 98
										None	
Improvements	1902	1923	11910000	11910000	11910000						
Debt Bonds Reacquired and Held in Trust											
Notes:											
St Ry of Minn 1st Ref	1888	1908	5000000	73000			73000	5	Apl-Oct	17625000	33752500
" Ref	1898	1948	15000000	9627000	2065000		7562000	4	"	2170855 55	2000000 00
M C Ry 1st Mtg Bds	1887	1937	10000000	6000000			6000000	6	July-Jan	360000 00	360210 00
				4000000			4000000	5	"	200000 00	300000 00
Consolidated Trust Bonds											
M M Ry	1882	1922	30000000	21500000			21500000	6	"	1290000 00	1290000 00
				650000			650000	5	"	32500 00	32500 00
D W & S Ry	1888	1938	3646080	3646000	21000		3625000	5	Jan-July	181250 00	181725 00
Fuel & Ry Ry	1888	1938	1375000	1375000	1375000					None	
P R & L C Ry	1899	1929	500000	500000	500000						
Income Bonds:											
S F & R Ry	1889	1939	2812000	2812000	2583000		229000	6	Jan-July	13740 00	7080 00
St Cloud Ry	1896	1916	291000	291000	291000					None	
Total Bonds Assumed.				125897900	31441969		97455931			4821110 93	4852519 98
MISCELLANEOUS OBLIGATIONS:											
M P - G N Ry Joint								Compromise Bonds			
C B & Q R R Collateral								July			
Trust Bonds			222400000					* January			
								Registered			
								July			
Amt Pledged	121522600							Oct.		4304520 00	4304520 00
Thru Sinking Fund Retirement				107613500			107613500	Jan			
								Apl			
TOTAL.				233510900	31441969		205068931			9121630 93	9157039 98

See Note 2 Page 22

EXPLANATORY REMARKS.

Note. The Amount of "Mortgage Bonds" outstanding $125,897,909.09
were issued by several companies for sundry purposes.
The payment of the Principal & Interest on these Bonds was assumed by
The Great Northern Ry Co. as part of the consideration for the Railways etc.
belonging to the issuing Companies which were purchased by The Great Northern Ry Co.
$4,700,000 First Division, First Mortgage Bonds issued by The Eastern Ry Co. of Minnesota matured
April 1, 1908. On their Redemption an equal amount of that Companys Northern Division
First Mtg Bonds were issued of which $2,562,000 were exchanged for the First Mtg.
Bonds mentioned $2,065,000 remaining in the Company's Treasury at the end
of the year.
On June 30, 1908, there was $73,000 of the First Division Bonds that had not
been presented for redemption

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds (Assumed by G.N. Ry Co.)	125897900	28441900		97455993	4817110 93	4853819 98
Plain Bonds, Debentures, and Notes,						
Collateral Trust Bonds, (G.N. Ry Co.)	107613000			107613000	4304520 00	4304520 00
Income Bonds,						
Miscellaneous Obligations,						
Equipment Trust Obligations,						
TOTAL,	233510900	28441900		205068993	9121630 93	9157039 98

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:					
Issued for Additions and Betterments:					
Issued for Purchase of Railway or Other Property:			125899900		See Note on page 26.
Issued for Acquisition of Securities:	None		107613000		Guarantee payment for 1076130 shares G.B.&Q. R.R. Co. stock G.N. Ry Co. for owned
Issued for Refundment of Securities:	4627000				
Issued for Reorganization:					
TOTAL,	4627000		233510900		

EXPLANATORY REMARKS

Note

In arriving at the Funded debt per mile of line of Pag 29 the par value of bonds in the Company Treasury has been deducted from the amount of Funded debt assigned to railways, as practically all said Mtg. Bonds were purchased with the proceeds of Capital Stock that is assigned to railways thus avoiding duplication of capital.

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RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	209,962,750	203,462,297	6,500,453	6,648.01	30,436	
Funded Debt—Page 27,	208,068,929 [27]	97,468,932 [27]	107,613,800	6,850.01	14,678	See note page 28
TOTAL,	418,031,679 [27]	300,931,229 [27]	114,113,453		45,014	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FORMED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,	11,688,302.20	Receiver's Certificates,	
Bills Receivable,	3,423,990.27	Loans and Bills Payable,	
Due from Agents,	1,810,222.74	Audited Vouchers and Accounts,	3,366,625.10
Due from Solvent Companies and Individuals,	2,220,182.30	Wages and Salaries,	2,423,494.32
Traffic Balances due from other Companies,	102,167.27	Traffic Balances due to other Companies,	
Other Cash Assets (Excluding "Materials and Supplies.")[1]		Dividends not Called for,	
		Matured Interest Coupons Unpaid [Including Coupons Due July 1].	1,658,447.23
		Rents due July 1,	10,000.00
		Miscellaneous,	1,220.00
TOTAL—CASH AND CURRENT ASSETS,	19,261,474.78	TOTAL—CURRENT LIABILITIES,	7,459,786.65
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	11,801,688.13
TOTAL,	19,261,474.78	TOTAL,	19,261,474.78

[1] Materials and Supplies on hand, $2,217,722.24

[See General Balance Sheet—Page 23.]

EXPLANATORY REMARKS.

Note 1. The entire amount expended during the year for "Additions & Betterments" $4,431,347.75 has been charged to "Cost of Road."

Of this amount there has been paid from sums that had been set aside from the Income of previous years, and credited to "Fund for permanent Improvement and Renewals" $2174,361.66 and the same amount has been credited to the Account in the Balance Sheet (Page 15) "Cost of Additions & Improvements made to property of The Great Northern Ry. Co. and paid for from Fund for Permanent Improvements & Renewals."

Note 2. The amount shown in column headed "Total Cost to June 30 1907 are the sums that had been expended during previous years upon property, which has since that date become the property of the Great Northern Ry Co., viz

Amount expended for Additions & Improvements to property then Leased from The St. P. M. & M. Ry. Co. and which forms part of the amount of $15,648,150.81 shown on Balance Sheet - Page 13 - in the June 30 1907 column, against the Account "Cost of A. & I. etc."

Sundry Amounts heretofore carried in the Accounts "Other Permanent Investments" & "Advances for Construction" which are chargeable to "Cost of Road"

	A
I. ROAD:	
1. Engineering,	
2. Right of Wa	
3. Real Estate,	
4. Grading,	
5. Tunnels,	
6. Bridges, Tres	
7. Ties,	
8. Rails,	
9. Frogs and Sw	
10. Track Faster	
11. Ballast,	
12. Track Laying	
13. Roadway Too	
14. Fencing Righ	
15. Crossings an	
16. Interlocking a	
17. Telegraph an	
18. Station Buildi	
19. General Office	
20. Shops, Engin	
21. Shop Machine	
22. Water Station	
23. Fuel Stations,	
24. Grain Elevato	
25. Storage Ware	
26. Dock and Wh	
27. Electric-Light	
28. Electric-Power	
29. Electric-Power	
30. Gas-Producing	
31. Miscellaneous	
32. Transportation	
33. Rent of Equip	
34. Repairs of Equ	
35. Earnings and C ing Construc	
36. Cost of Road F	

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EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. (See page 33.)		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
1. ROAD:						
1. Engineering,	1 1 0 1 8 1 5 3		2 5 3 2 6 6 2		9 3 6 9 5 9 3	2 3 4 3 0 4 0 8
2. Right of Way and Station Grounds,	1 1 3 1 0 5 4		2 0 3 7 8 7 4		1 0 8 1 4 1 7 4 2	1 3 0 2 6 0 5 9 0
3. Real Estate,	2 1 2 4 0 4 6 6		2 1 5 1 8 3 9 4		9 7 6 6 2 9 9	3 2 4 3 5 1 5 9
4. Grading,	1 6 2 7 2 3 7 1 8		8 5 7 8 2 5 5 2		1 9 7 2 1 9 5 0 3	4 4 5 7 1 8 7 7 3
5. Tunnels,	2 1 7 4 2 6 9 8				1 9 2 9 5 8 2 7 5	2 1 6 7 0 0 2 7 3
6. Bridges, Trestles, and Culverts,	3 5 9 4 6 0 3 7		5 7 5 0 1 2 0 1		1 2 9 6 7 7 9 8 0	2 2 5 1 2 5 2 1 8
7. Ties,	6 7 1 8 5 3 3 5		2 9 3 2 1 3 5 6		6 4 3 9 7 7 8 1	1 6 0 8 4 3 7 2
8. Rails,	1 5 9 4 5 4 9 2 7		4 0 2 7 7 5 4 1		1 6 2 1 2 5 6 4 5	3 6 1 8 5 8 1 1 3
9. Frogs and Switches,	1 9 1 3 1 9 2		1 5 5 0 1 4 0 0		3 5 6 7 6 3 0 4	5 3 0 7 0 8 9 6
10. Track Fastenings and Other Material,	3 9 4 2 3 1 8 5		7 5 6 7 7 4 8		4 7 0 0 3 9 8 7	9 3 9 7 3 8 3 3
11. Ballast,	1 0 9 1 8 9 7 3		3 5 1 4 2 6 2		1 1 4 5 3 6 3 2 9	1 5 5 7 6 9 4 6 4
12. Track Laying and Surfacing,	3 5 5 1 7 9 0 6		8 6 4 6 5 1 2		4 5 7 4 1 5 3 4	7 9 9 0 5 3 5 2
13. Roadway Tools,	3 5 7 1 8					2 5 7 1 8
14. Fencing Right of Way,	6 6 1 6 6 3 9		1 9 5 8 6 8 6		1 2 7 7 8 9 0 4	2 1 3 5 4 2 3 9
15. Crossings and Signs,	4 7 6 9 1 3		2 5 9 4 5 5 6		6 3 4 3 5 7	3 7 0 5 8 2 6
16. Interlocking and Other Signal Apparatus,	8 8 3 3 0		1 4 8 4 9 7 5 1		3 9 4 5 0 8 6	1 8 8 8 3 1 6 7
17. Telegraph and Telephone Lines,	4 3 2 5 7 7 5		2 6 0 3 7 9 2		1 0 5 5 9 1 1	8 3 8 4 3 1 8
18. Station Buildings and Fixtures,	5 1 2 4 0 5 7		1 2 8 2 6 9 1 9		6 0 2 9 1 5 6 4	7 8 2 4 2 5 4 0
19. General Office Buildings and Fixtures,			7 4 7 8 5		9 0 5 9	8 3 8 4 4
20. Shops, Enginehouses, and Turntables,	1 1 9 2 8 0 0		3 5 7 8 1 5 3 5		1 2 3 4 5 1 6 8 1	1 6 0 4 2 6 0 1 6
21. Shop Machinery and Tools,			9 5 4 0 7 3 4		7 8 7 2 7 4 9 7	8 8 2 6 8 2 2 1
22. Water Stations,	1 3 2 6 6 6 2 0		2 7 3 1 6 7 5 8		1 0 1 5 1 6 2 4 2	1 4 2 0 9 9 6 2 0
23. Fuel Stations,	5 2 5 1 4 1		1 6 8 4 8 0 7		5 6 4 3 8 6 8	7 8 5 0 8 1 6
24. Grain Elevators,					2 3 3 0 5 2 0 2	2 3 3 0 5 2 0 2
25. Storage Warehouses,					2 0 7 7 4 7	2 0 7 7 4 7
26. Dock and Wharf Property,			1 4 5 8 1 6 3 4		5 4 6 9 1 0 9 9	6 9 2 7 2 7 3 3
27. Electric-Light Plants,					1 2 8 7	1 2 8 7
28. Electric-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,					7 2 5 3 6 6	7 2 5 3 6 6
31. Miscellaneous Structures,	7 1 6 5 2 5 0		2 3 9 7 3 4 6 6		4 2 1 1 8 2 2 6 2	7 8 2 5 1 9 7 8
32. Transportation of Men and Material,	6 4 0 0 5 2 9 9					6 4 0 0 5 2 9 9
33. Rent of Equipment,	2 3 4 8 1 9 4 9					2 3 4 8 1 9 4 9
34. Repairs of Equipment,	6 5 6 4 0 8					6 5 6 4 0 8
35. Earnings and Operating Expenses during Construction,	1 6 6 7 9 3 9					1 6 6 7 9 3 9
36. Cost of Road Purchased,	2 1 2 2 7 6 1 1 5 4 8				2 4 6 4 4 7 7 6	2 1 2 5 2 0 0 6 3 2 4
TOTAL,	2 1 8 9 5 0 8 4 8 3 3		4 4 3 1 3 8 7 7 5		1 6 5 1 6 8 4 3 8 6	2 3 9 8 9 9 0 7 9 9 4

EXPLANATORY REMARKS

Note The Amount shown for Equipment in Column headed "Total Cost to June 30, 1907" includes $422,597.97 expended upon Equipment then Leased but which has since become the property of the Great Northern Ry Co and forms part of the $15,648,150.81 shown in column for June 30, 1907 on Balance Sheet - Page 83 - as "Cost of A & D. etc"

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EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO CAPITAL.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO SPECIAL FUNDS OR INCOME.	EXPENDITURES FOR ADDITIONS AND [illegible]S DURING YEAR. [See page 33.] CHARGED TO CAPITAL.	EXPENDITURES FOR ADDITIONS AND [illegible]S DURING YEAR. [See page 33.] CHARGED TO SPECIAL FUNDS OR INCOME.	TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
II. EQUIPMENT:						
37. Steam Locomotives,	427306008		2499326 91		86265944	1539896123
38. Electric Locomotives,						
39. Passenger-Train Cars,	17119173		7932490		3997633 88	57027951
40. Freight-Train Cars,	13081787 24		5403229 32		12251638 01	22706624 57
41. Work Equipment,	4589495 8		844640		7178458 1	1256262 59
42. Floating Equipment,						
TOTAL,	19490678 63		6980270 33		24593694 94	51064643 90
III. GENERAL EXPENDITURES:						
43. Law Expenses,	7180					7180
44. Stationery and Printing,	10717					10717
45. Insurance,	66354					66354
46. Taxes,	197225					197225
47. Interest and Commissions,	4475905 4				2102 57	4496993 11
48. Other Expenditures,	4137					4137
TOTAL,	4485889 3				2102 57	4506915 0
RECAPITULATION.						
I. ROAD,	218950848 33		4431387 75		16516843 86	239899079 94
II. EQUIPMENT,	19490678 63		6980270 33		24593694 94	51064643 90
III. GENERAL EXPENDITURES,	4485889 3				2102 57	4506915 0
TOTAL—ENTIRE LINE,	238890115 89		11411658 08		41112641 37	291471437 84
TOTAL—STATE OF						
Cost of Road per Mile of Line,						38499 90
Cost of Equipment per Mile of Line,						8195 98
General Expenditures per Mile of Line,						723 32
TOTAL PER MILE OF LINE,						46761 20
Total per Mile of Line—State of					Lamar State	

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:																						
Rail Operations:																						
Operating Revenues—Page 45,	54	06	95	38	74	*	*	*			*	*	*									
Operating Expenses—Page 65,	35	86	76	00	24	*	*	*			*	*	*									
NET OPERATING REVENUE,	*	*	*			18	20	19	38	50	*	*	*									
NET OPERATING DEFICIT,	*	*	*								*	*	*									
Outside Operations—Page 67, A:																						
Revenues,		90	8	62	3	73	*	*	*			*	*	*								
Expenses,		57	4	87	9	80	*	*	*			*	*	*								
NET REVENUE,	*	*	*				33	37	43	93		*	*	*								
NET DEFICIT,	*	*	*									*	*	*								
TOTAL NET REVENUE,	*	*	*			18	53	56	82	43		*	*	*								
TOTAL NET DEFICIT,	*	*	*									*	*	*								
Taxes Accrued—Page 121, A,	*	*	*			2	27	60	74	18		*	*	*								
OPERATING INCOME,	*	*	*			*	*	*				16	25	96	08	25						
OPERATING LOSS,	*	*	*			*	*	*														
OTHER INCOME:																						
Rents Accrued from Lease of Road—Page 69,	*	*	*				30	1	12	15		*	*	*								
Other Rents—Credits:																						
(a) Hire of Equipment—Balance—Page 81,		38	4	11	6	72	*	*	*			*	*	*								
(b) Joint Facilities—Page 69,		29	4	98	2	83	*	*	*			*	*	*								
(c) Miscellaneous Rents—Page 71,		18	9	52	3	70	*	*	*			*	*	*								
	*	*	*				84	86	23	60		*	*	*								
Separately Operated Properties—Profit—Page 75,	*	*	*									*	*	*								
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,	*	*	*			4	35	80	09	22		*	*	*								
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,	*	*	*				12	54	35	00		*	*	*								
Interest on Other Securities, Loans, and Accounts,	*	*	*			2	17	64	74	41		*	*	*								
Miscellaneous Income—Page 71,	*	*	*					18	08	56	10	*	*	*								
TOTAL OTHER INCOME,	*	*	*			*	*	*				7	57	25	39	21						
Gross Corporate Income carried forward,	*	*	*			*	*	*				23	83	21	47	46						
Gross Corporate Loss carried forward,	*	*	*			*	*	*														

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

| | | |

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Loss—Page 65, B,	6 07 26 35 4	Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B,	20 746 719 46
Deductions for Year: Loss from Operation of the Edison Electric Illuminating Co for the year ending July 1907	375 946 35	Additions for Year: Undivided profits from Operation of the following Railways to July 1, 1907 which were turned over to the Company as a stockholder on that date, when the property of said Companies was purchased and the entire stock of said Companies was placed among the Stockholders	
Loss from Operation of the Lake Shore Ry Co to July 1 1907	87 181 50		
Adjustment of amounts erroneously charged the Lehigh Terminal Ry Co by the Lehigh Valley Ry Co in former years	92 107	Lehigh Valley Ry Co Wilkes-Barre & Hazleton Ry Co Susquehanna Ry Co Northern Central Ry Co Beech Creek & Lehigh Valley Ry Co	587 618 92 25 794 272 20 806 716 90 182 654 128 172 20
Dividends Declared out of Surplus:		Delaware, Lackawanna & Western Ry Co Utah & Northern Ry Co Spokane Falls & Northern Ry Co Seattle & Montana R R Co	162 912 42 324 718 30 1 206 382 479 277 022
(a) On Preferred Stock—Page 21 per cent payable per cent payable		Profits from Operation of the Lake Shore Ry Mar Co to June 30, 1907	256 698 91
(b) On Common Stock—Page 21 per cent payable per cent payable		Profit from Securities sold	592 168 63
(c) On Other Securities—Page 21 per cent payable		Refund of Amount charged this account in former years.	426 25
Balance Credit, June 30, 1908, carried to Balance Sheet—Page 85,	7 718 309 152	Balance Debit, June 30, 1908, carried to Balance Sheet—Page 83,	
	28 254 204 58		28 254 204 58

OPERATING REVENUES—STATE OF .....

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			3246581[illegible]
2. Passenger Revenue,			1977966[illegible]
3. Excess Baggage Revenue,			21[illegible]
4. Parlor and Chair Car Revenue,			86[illegible]
5. Mail Revenue,			121[illegible]
6. Express Revenue,			
7. Milk Revenue (on Passenger Trains),			100[illegible]
8. Other Passenger-Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			[illegible]
9. Switching Revenue,			163[illegible]
10. Special Service Train Revenue,			63[illegible]
11. Miscellaneous Transportation Revenue,			7[illegible]
TOTAL REVENUE FROM TRANSPORTATION,			56008957[illegible]
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			345387
13. Parcel-Room Receipts,			119461[illegible]
14. Storage—Freight,			10112[illegible]
15. Storage—Baggage,			92853[illegible]
16. Car Service,			2903421
17. Telegraph Service,			82443
18. Rents of Buildings and Other Property,			654278
19. Miscellaneous,			1086356
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			7296155
TOTAL OPERATING REVENUES—STATE,			5673857[illegible]
TOTAL OPERATING REVENUES—ENTIRE LINE,			5406953874

(No entries required in this column for 1908.)

(No entries required in this column for 1908.)

EXPLANATORY REMARKS.

Note 1 The figures entered upon Page 45 A. as "Operating revenues from Interstate business accruing to the State of Minnesota divided on straight mileage bases" have been compiled upon that bases in accordance with the order of The Board of Railroad & Warehouse Commissioners, and are given under protest, for the reason that this Company claims that bases does not truthfully reflect, the amount earned in the State of Minnesota

Note 2. In compiling figures entered on Page 45 A only traffic that has actually been handled by the Great Northern Ry Co in two or more states has been included.

Traffic originating at a Station on the Line of the Great Northern Railway Co & delivered in that state to a connecting Line of Railway and traffic movement received from a connecting Line of Railway in the State of Minnesota and delivered at a station on the Line of the Gt Nor. Ry Co. or to another connecting Line of Railway in that State, has not been included in Page 45 A as "Interstate Business" but having originated & terminated in the State of Minnesota as far as the Great Northern Ry Co. is concerned has been included on page 45 regardless of Original point of Origin or final destination of such traffic

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Operating revenues from Interstate business accruing to the State of Minnesota divided on straight mileage basis, see note 2, page 44.

OPERATING REVENUES.
STATE OF MINNESOTA.

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			12442129127
2. Passenger Revenue,			1667658927
3. Excess Baggage Revenue,			293519 27
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			2980879 23
6. Express Revenue,			1150642 27
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			20991623 54
9. Switching Revenue,			—
10. Special Service Train Revenue,			116381
11. Miscellaneous Transportation Revenue,			676501
TOTAL REVENUE FROM TRANSPORTATION,			14529220998
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			372973
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			
19. Miscellaneous,			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			372973
TOTAL OPERATING REVENUES,			14552950971
TOTAL OPERATING REVENUES, Pages 45 and 45a,			20226806803

RAILWAY STOCKS OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS. UNPLEDGED.	PLEDGED.	RATE.	DIVIDENDS DECLARED.	VALUATION.
Stocks of Respondent Corporation:					
Great Northern Railway Co	761250				761250 00
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Midland Ry Co of Manitoba	500000				500000
Brandon Sask & Hudson Bay Co	450000				450000
Crow Nest Southern Ry Co	1200000				1200000
Nelson & Ft Sheppard Ry Co	1500000 00				783769 81
Red Mountain Ry Co	190600 00				95332 25 Valuation for Taxation
Texas Pacific R. Ry & Nav Co	500000				
New Westminster & S. Ry Co	600000				260000
Duluth Terminal Ry Co	500000		6	300000	500000
St Paul Union Depot Co		1036 0000	6	62160 0	1036000
Lake Superior Term & Trans Ry Co	718000				718000
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Pacific Anaconda & Pac Ry Co	Sold		8	1470000	
Mpls Western Ry Co	2500000			None	2500000 00
Sioux & Gt Northern Ry Co	5000000			-	5000000 00
Duluth & Superior Bridge Co	2000000			-	2000000 00
Farmers Term & Shipping Co	121026 00			-	77855 44
Minnesota Transfer Ry Co		700000		-	700000
Kootenay Ry & Nav Co. Debentures	4 500000			-	1545858 04
Victoria & Sidney Ry Co	2 19717			-	
Vict Terminal & Ferry Co	8 985000			-	21250 00
Gt Falls & Black Hills R.R. 4,076.130 Shares	250 00			-	250 00
Gt N Ry Co on Half Owned	5380 4500 00		8	4304 52000	109 114 30976
TOTAL,				4328 43600	113 972 27530

RAILWAY FUNDED DEBT OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF FUNDED DEBT OWNED NOT HELD IN SINKING OR OTHER FUNDS.		RATE.	INTEREST ACCRUED.	VALUATION.
	UNPLEDGED.	PLEDGED.			
Funded Debt of Respondent Corporation:					
St P M & M Ry. Gen. 1st Ref. Bonds	9.69696970				10000000000
Improvement Bonds	11910000000				11910000000
First Mtg. Bonds Park Rapids & L.L. Ry Co.	50000000				50000000
W. & D. R. Ry Co.	2100000				2100000
Del. Watertown & Roc. Ry Co.	13750000000				13750000000
S. F. & R. Ry. Co.	2583000000				2547567888
Col. & Red Metal. Ry. Co.	29100000				28118563
E. Ry of Minn. Nor. Division	2065000000				2065000000
	28441969700				28699353451
Funded Debt of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Butte Anaconda & Pacific Ry. Co.	1000000000		5	50000000	900000000
Farmers Grain & Shipping Co.	4380000		5	273500	3879000
Duluth & Superior Bridge Co.					
1st Mortgage	65000000		5		65000000
2nd	28900000		5		28900000
Wisconsin Central Ry Term. Co.	27500000		6%	962500	24750000
Minnesota Transfer Ry. Co.	17500000		4+5	769000	17500000
TOTAL,	33463969700			12506500	33655890003

OPERATING EXPENSES—ENTIRE LINE.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,	55168928	5.53	1.54
Ballast,	11233969	1.13	3.31
Ties,	118620792	11.89	33.31
Rails,	44176585	4.43	12.33
Other Track Material,	6218758	.624	1.73
Roadway and Track,	474751345	47.63	13.24
Removal of Snow, Sand, and Ice,	11803689	1.18	.33
Tunnels,	1912921	.19	.05
Bridges, Trestles, and Culverts,	61478523	6.17	1.71
Over and Under Grade Crossings,	2915009	.24	.07
Grade Crossings, Fences, Cattle Guards, and Signs,	7827159	.79	.22
Snow and Sand Fences and Snow Sheds,	1821902	.18	.05
Signals and Interlocking Plants,	3775702	.38	.11
Telegraph and Telephone Lines,	5899841	.59	.17
Electric Power Transmission,			
Buildings, Fixtures, and Grounds,	70876967	7.11	1.98
Docks and Wharves,	1958650	.19	.05
Roadway Tools and Supplies,	10739159	1.08	.30
Work Equipment—Repairs,	28979855	2.91	.81
Work Equipment—Renewals,	961723	.10	.03
Work Equipment—Depreciation,	69456832	6.9	1.9
Injuries to Persons,	8524960	.86	.24
Stationery and Printing,	1597899	.16	.04
Insurance,	7029346	.70	.19
Other Expenses,	74649		
Total of Foregoing Accounts,	100062501.9	100.97	27.90
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,	9748727	.97	.27
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,	1346042	.14	.04
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	99464704	10.00	2.77
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,	17660.75	2.25	.49
Steam Locomotives—Repairs,	22276704	2.235	6.21
Steam Locomotives—Renewals,			
Steam Locomotives—Depreciation,	54392805	10.74	2.35
Electric Locomotives—Repairs,			
Electric Locomotives—Renewals,			
Electric Locomotives—Depreciation,			
Passenger-Train Cars—Repairs,	48646721	6.19	1.36
Passenger-Train Cars—Renewals,	1149169	.15	.03
Passenger-Train Cars—Depreciation,	23423872	2.98	.65
Freight-Train Cars—Repairs,	168212255	21.41	4.70
Freight-Train Cars—Renewals,	18240215	2.32	.51
Freight-Train Cars—Depreciation,	16660955	21.21	4.65
Electric Equipment of Cars—Repairs,			
Electric Equipment of Cars—Renewals,			
Electric Equipment of Cars—Depreciation,			
Floating Equipment—Repairs,			
Floating Equipment—Renewals,			
Floating Equipment—Depreciation,			
Shop Machinery and Tools,	10665876	1.36	.29
Power Plant Equipment,			
M. E. Expenses carried forward,	76177082	9.696	21.24

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
II. MAINTENANCE OF EQUIPMENT—Continued:			
Brought forward,	761773287	9696	7174
Injuries to Persons,	3779031	48	10
Stationery and Printing,	11887178	15	03
Insurance,	10571819	135	29
Other Expenses,	7941976	101	27
Total of Foregoing Accounts,	785254886	9995	7188
Maintaining Joint Equipment at Terminals—Dr.,	3128120	39	09
Equipment Borrowed—Dr.,	17859096	228	50
Maintaining Joint Equipment at Terminals—Cr.,	11906449	15	03
Equipment Loaned—Cr.,	19408018	247	54
TOTAL—MAINTENANCE OF EQUIPMENT,	785643435	10000	2190
III. TRAFFIC EXPENSES:			
Superintendence,	16010069	2211	45
Outside Agencies,	3601810	4973	101
Advertising,	9063900	1251	25
Traffic Associations,	784546	108	02
Fast Freight Lines,			
Industrial and Immigration Bureaus,	3576908	494	10
Stationery and Printing,	5130648	709	14
Insurance,			
Other Expenses,	1836596	254	05
TOTAL—TRAFFIC EXPENSES,	72420767	10000	202
IV. TRANSPORTATION EXPENSES:			
Superintendence,	7943605	1098	109
Dispatching Trains,	1920714	265	54
Station Employees,	17632998	1065	492
Weighing and Car-Service Associations,	4555751	627	13
Stockyards and Grain Elevators,			
Coal and Ore Docks,			
Station Supplies and Expenses,	16019771	997	445
Yardmasters and their Clerks,	17787937	1098	49
Yard Conductors and Brakemen,	5374424	3324	1050
Yard Switch and Signal Tenders,	4740691	729	13
Yard Supplies and Expenses,	627417	094	02
Yard Enginemen,	3044099	1884	845
Enginehouse Expenses—Yard,	11189088	677	31
Fuel for Yard Locomotives,	5220797	3235	1446
Water for Yard Locomotives,	2232761	138	06
Lubricants for Yard Locomotives,	936124	058	03
Other Supplies for Yard Locomotives,	911282	056	03
Total of Last Fifteen Accounts,	43035654	26638	1201
Operating Joint Yards and Terminals—Dr.,	2967138	1837	83
Operating Joint Yards and Terminals—Cr.,	864622	052	24
Total Station and Yard Expenses,	45136329	27935	1260
Motormen,			
Road Enginemen,	18807199	11636	5244
Enginehouse Expenses—Road,	5344641	3308	1499
Fuel for Road Locomotives,	27523599	28699	13765
Water for Road Locomotives,	1574349	974	444
Lubricants for Road Locomotives,	8096510	4989	2271
Other Supplies for Road Locomotives,	946381	585	266
Transportation Expenses carried forward,	75009379	46429	21290

Note

The Operating Expenses - State of Minnesota entered on Page 6 have as nearly as possible been arrived at in accordance with the rules that have so far been agreed upon or adopted by the Committee of Statistics of the National Association of Railway Commissioners

The Company considers the apportionment of its total Operating Expenses between the States in which its Lines are located, on the basis of train mileage, as incorrect & misleading and producing erroneous & misleading results, and consequently has not followed that basis.

POOR COPY

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
IV. TRANSPORTATION EXPENSES—Continued:			
Brought forward,	7500 482 14	45 29	20 90
Operating Power Plants,			
Purchased Power,			
Road Trainmen,	1844 522 46	11 13	5 14
Train Supplies and Expenses,	672 930 33	4 06	1 87
Interlockers, Block and Other Signals—Operation,	63 687 10	39	17
Crossing Flagmen and Gatemen,	194 958 73	12	5 46
Drawbridge Operation,	4 887 10	04	02
Clearing Wrecks,	122 308 18	74	35
Telegraph and Telephone—Operation,	283 210 91	1 71	79
Operating Floating Equipment,			
Express Service,			
Stationery and Printing,	88 793 52	54	24
Insurance,	60 590 30	36	17
Other Expenses,	54 368 11	33	15
Loss and Damage—Freight,	461 268 91	2 79	1 29
Loss and Damage—Baggage,	5 090 76	03	01
Damage to Property,	157 593 18	95	44
Damage to Stock on Right of Way,	107 665 10	65	30
Injuries to Persons,	597 367 85	3 61	1 67
Total of Last Twenty-six Accounts,	12 047 295 28	72 74	33 57
Operating Joint Tracks—Dr.,	17 562 68	11	05
Operating Joint Tracks—Cr.,	1 721 207	10	05
Total Movement Expenses,	34 961	01	—
TOTAL—TRANSPORTATION EXPENSES,	16561 207 83	100 —	46 17
V. GENERAL EXPENSES:			
Salaries and Expenses of General Officers,	145 739 56	19 27	41
Salaries and Expenses of Clerks and Attendants,	338 732 13	44 80	94
General Office Supplies and Expenses,	20 704 83	2 74	05
Law Expenses,	166 952 60	22 35	47
Insurance,	88 49	—	—
Relief Department Expenses,			
Pensions,	59 970	08	—
Stationery and Printing,	42 869 76	5 67	12
Other Expenses,	34 688 84	4 54	10
Total of Foregoing Accounts,	752 975 91	99 50	209
General Administration Joint Tracks, Yards, and Terminals—Dr.,	5 561 18	74	02
General Administration Joint Tracks, Yards, and Terminals—Cr.,	1 860 74	24	
TOTAL—GENERAL EXPENSES,	756 078 35	100 —	211
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures,	9 969 677 04		27 80
II. Maintenance of Equipment,	7 856 494 35		21 90
III. Traffic Expenses,	724 207 67		202
IV. Transportation Expenses,	16 561 207 83		46 17
V. General Expenses,	756 078 35		211
TOTAL OPERATING EXPENSES,	35 867 600 24		100 —
Ratio of Operating Expenses to Operating Revenues, 66.34 per cent.*			
OPERATING EXPENSES—~~STATE OF~~ MINNESOTA			
I. Maintenance of Way and Structures,	3 435 949 50		27 80
II. Maintenance of Equipment,	2 707 641 53		21 90
III. Traffic Expenses,	249 590 93		202
IV. Transportation Expenses,	5 707 665 467		46 17
V. General Expenses,	260 573 12		211
TOTAL OPERATING EXPENSES,	12 361 409 75		100 00
Ratio of Operating Expenses to Operating Revenues, 41.11 per cent.*			

As demanded by the R.W.H. Com.

* Two (2) decimal figures required.

RENTS RECEIVABLE.

1. FROM LEASE OF ROAD.

[For companies making operating reports.]

PROPERTY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
Tracks	Belleville Coach to Jamaica Lake	Lake Waterous Logging Co	25100	
	Swan River Minn to Mississippi River			
	Barclay Jct Minn to Dewey Lake	Swan River Logging Co Ltd.	600000	
Freight House	St Paul Minn	Chi Burl & Quincy R R Co	1993617	
Spur Track	Minneapolis Minn		200000	
Depot & Accessories Acct		Mpls & St Louis Ry Co	180498	
Tracks	St Anthony Park Minn.	Minn Transfer Ry Co.	12000	
TOTAL,				3011215

2. FROM JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
JOINT TRACKS:	St Paul & Minneapolis	Chi Burl & Quincy R R Co	3972398	
		Chi. St P M & O Ry Co	3923161	
	St Paul to St Cloud Minn	Minn Central Ry Co	202161	
	Spokane Division Coach	Northern Pacific Ry Co.	1376553	
	Adrian Coach to Ephrata Coach		68950	
	Helena Mont to Boulder Mont		26319	
	Missabe Division		300510	
	Colbert & Spokane	Swan River Logging Co Ltd	349588	
		Spok F & N Ry Co (Jnt use of tracks)	120359	
				11984618
JOINT YARDS AND TERMINALS:	St Paul & Minneapolis	Chi Burl & Quincy R R Co	7885293	
		Chi St Paul Minn & O Ry Co	4399806	
		Minn Central Ry Co	1617585	
		Northern Pacific Ry Co	3158506	
	St Paul Minn	St Paul Union Depot Co	177000	
	Minneapolis	Minneapolis Western Ry Co	160128	
	Adrian Wash	Northern Pacific Ry Co	106858	
	Devils Lake N D	Farmers Grain & Shipping Co	32104	
	O R & N Jct Wash	O R R & N Co.	13606	
	Sundry Small Items		54782	
				17513670
TOTAL,				29498288

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RENTS RECEIVABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
Coal Docks	Superior Wis.	Coal Companies	150246 0	
Elevators	"	A D Thompson	662667 8	
"	Minneapolis Minn	Northern Grain Co	45119 0	
Ground	St Paul & Minneapolis	No. Western Fuel Co	28250 0	
"	"	Phila & Reading Coal & Iron Co	14037 6	
"	"	Lehigh Valley Coal Co	4650 0	
"	St Anthony Park Minn	Minneapolis Gen Elec Co	3750 0	
"	"	Union Ferry Co	1750 0	
Eating House	Willmar Minn	L. E. Miller	6094 3	
Rents & permits	Various Points	Elevator & Fuel Co's	637616 6	
Eating House	"	C. H. Shaver Agent Co	59892 8	
Right of Way	"	No. Western Tel Exch Co	10425	
Elec Mill	Spokane Wash	Portland Flour Mill Co	7815 55	
Buildings Grounds etc	Various Points	Sundry Co's & Individuals	18374 49	
TOTAL,				1895370

MISCELLANEOUS INCOME.

SOURCE OF INCOME.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Cash Discounts			180513
TOTAL,			180513

RENTS PAYABLE.

1. FOR LEASE OF ROAD.

NAME OF LESSOR.	LOCATION OF PROPERTY.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
St Paul Minneapolis & Manitoba Ry Co	St Paul & Minneapolis to Pacific Coast July 1 to Oct 31.07.	1171245 85	670000	204204	1199987 89
Leased Supr & Western Tel Co - Saunders & Allaway Wts				2000000	2000000
TOTAL,		1171245 85	670000	2704204	1199987 89

2. FOR JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
JOINT TRACKS:	Stirling District	Duluth Missabe & Nor Ry Co	261097	
	Casselton to Fargo	Northern Pacific Ry Co	302100	
	Drysdale to Red Lake Falls	"	309170	
	Snoll to Everett	"	491853	
	Spokane Branch	"	41214	
	St Louis River Bridge	"	130065	
	Superior Wis	"	1297550	
	Gn Duluth Minn	Duluth Terminal Ry Co	506997	
				7073513
JOINT YARDS AND TERMINALS:	St Paul Minn	Chic Burl & Quincy R R Co	715781	
	Duluth "	St Paul Union Depot Co	574096	
	Duluth "	Duluth Union Depot Co	674986	
	Butte Mont	Northern Pacific Ry Co	1140972	
	Helena "	"	179000	
	Spokane "	"	274571	
	Grand Forks Gn	Grand Forks Land Co	120000	
	Fargo	Northern Pacific Ry Co	795150	
	Fargo	Province of Dakota	150000	
	Fargo	Minneapolis St Louis & Mitchell Ry Co	195175	
	Fargo	Canadian Pacific Ry Co	100000	
	Fargo	C & N W Ry Co	90000	
	Fargo	Sundry	1767 24	
				7985324
TOTAL,				15058837

RENTS PAYABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
Sundry Lots	New Westminster B.C.	City of New Westminster	513 81	
Strip Lands	Burrett Creek	Nathan Perley	150 00	
Harbor Area	Ancouta	C.W. Rose	255 96	
Permit to build track on Land owned by Dotd. B.C.	Nicola District	Coastal Iron Co	250 00	
	Sundry	Sundry	89 55	
TOTAL,				3509 29

OTHER DEDUCTIONS FROM INCOME.

NATURE OF DEDUCTION.	ITEM.	TOTAL.	REMARKS.
		None	
TOTAL,			

SEPARATELY OPERATED PROPERTIES.

[For companies making operating reports.]

NAME OF PROPERTY.	LOCATION OF PROPERTY.	PROFIT.	LOSS.
Kootenay Ry. & Nav. Co. Ltd.			
Kootenai Valley Ry	Bonners Ferry Idaho to Interntl. Boundary		
Burlington Nelson Ry	Intl. Bdry to Kuskonook B.C.		1558 61 59
Kaslo & Slocan Ry	Kaslo B.C. to Sandon B.C.		
Dntl. Rate Binding Co.	Steamers on Kootenay Lake		
NET TOTAL,			1558 61 59

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
13855048 21		Cost of Properties & Securities				13855048 21
		Cost of Road—Page 35,	2398990794		2398990794	
24171796 97		Cost of Equipment—Page 37,	5106464390		2609354693	
		General Expenditures—37,	45069150		45069150	
18563897366		Stocks Owned—Pages 49, 51, and 57,	12172165278			6391732088
22377457753		Funded Debt Owned—Pages 53, 55, and 57,	3355630318		1117888565	
2581328 59		Other Permanent Investments,	41776822 24		1626353 65	
6207560 21		Advances for Construction	4459510320			1778050201
	31096451037			49546519674		
		Lands Owned,				
		Cost of All Roads by Co. to Property Leased from Y. & M. V. R. R. Co.				
	15648 1508	Paid for from Land Sales,				1564815081
	31016732663	Cash and Current Assets—Page 29		1926147478		11755227 85
		OTHER ASSETS:				
		Equipment Trusts,				
5885 17977		Materials and Supplies—Page 29,	8217723 24		2332583 47	
		Sinking, Insurance, and Other Funds—Page 59,				
		Sundries,	1050052 80		1050052 80	
8907243	5974252 20	Advanced Charges		~~9267776 04~~		8907243
				9267776 04		
		Profit and Loss—Page 43,				
	363603 67601	GRAND TOTAL,		523994447 56	16038583155	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	LIABILITIES.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	149,377,500.00	Capital Stock—Page 21,		209,962,750.00	60,385,250.00	
	34,616,212.00	Stock Subscriptions				34,616,212.00
	107,613,000.00	Funded Debt—Page 27,		233,510,909.09	125,897,909.09	
	9,244,739.39	Current Liabilities—Page 29,		7,450,190.65		1,794,548.74
	880,526.00	Taxes not due		1,036,542.81	156,016.81	
		Accrued Interest on Funded Debt not yet payable,		262,923.33	262,923.33	
	337,483.13	Accrued Interest not yet payable				337,483.13
	288,205.00	Rentals not due				288,205.00
45,272,058.16		Fund for Per. Imp. & Renewals	48,442,658.78		3,170,600.62	
7,354,863		Sinking Fund Imperial Coal Co.	11,570,375		423,591.2	
4,444,106.9		Insurance Fund	4,818,544.97		374,736.8	
66,151,521.73		Fund for Depreciation of Equipment in Service	142,269,984.52		7,718,462.79	
	116,961,822.1			198,120,884.2		
	15,148,150.81	Cost of A & D. made to property paid for from Fund for Permanent Impts. & Renewals		178,225,124.7	21,743,616.6	
		N.O.T.M.R.R. General Mtg. Bonds, issued since Oct. 1, 1907, through Operation of Sinking Fund		7,800,000	7,800,000	
	9,937,398.01	Surplus Funds of Proprietary Co. deposited with this Co.		6,875,489.27		3,061,908.74
	23,766,719.46	Profit and Loss—Page 43,		27,183,091.52	3,416,372.06	
	362,606,161.01	GRAND TOTAL,		523,994,447.46	160,885,881.55	

BLURRED PAGES

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	6926161			
2. Number of Passengers Carried One Mile,	441485194			
3. Number of Passengers Carried One Mile per Mile of Road,	75445			
4. Average Distance Carried,* miles,	7096			
5. Total Passenger Revenue—Page 45,		11159222	34	
6. Average Amount Received from each Passenger,†			161	17
7. Average Receipts per Passenger per Mile,†			2	270
8. Total Passenger Service Train Revenue—Page 45,		1844696	385	
9. Passenger Service Train Revenue per Mile of Road,*		20641	4	
10. Passenger Service Train Revenue per Train-Mile,†			150	523
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	19232228			
12. Number of Tons Carried One Mile,	5132087094			
13. Number of Tons Carried One Mile per Mile of Road,	737787			
14. Average Distance Haul of One Ton,* miles,	26684			
15. Total Freight Revenue—Page 45,		40046392	85	
16. Average Amount Received for each Ton of Freight,†			208	225
17. Average Receipts per Ton per Mile,†				780
18. Freight Revenue per Mile of Road,*		614721		
19. Freight Revenue per Train-Mile,†			3989	14
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		54069088	74	
21. Operating Revenues per Mile of Road,*		829979		
22. Operating Revenues per Train-Mile,†			2974	57
23. Operating Expenses—Page 65 (or 65A),		35867600	74	
24. Operating Expenses per Mile of Road,*		550576		
25. Operating Expenses per Train-Mile,†			1973	31
26. Net Operating Revenue (or Deficit)—Page 39,		18201938	50	
27. Net Operating Revenue (or Deficit) per Mile of Road,*		279403		
28. Average Number of Passengers per Car-Mile,	9			
29. Average Number of Passengers per Train-Mile,	55			
30. Average Number of Passenger Cars per Train-Mile,*	6.53			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	2049			
32. Average Number of Tons of Freight per Train-Mile,*	51122			
33. Average Number of Freight Cars per Train-Mile,*	33.45			
34. Average Number of Loaded Cars per Train-Mile,*	24.95			
35. Average Number of Empty Cars per Train-Mile,*	7.57			
36. Average Mileage Operated During Year,*	65145.6			

*Two (2) decimal figures required. †Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	9970478	
38. Passenger Locomotive-Miles	839545	
39. Mixed Locomotive-Miles,	871941	
40. Special Locomotive-Miles,	17267	
41. Switching Locomotive-Miles,	3455215	
42. TOTAL IN REVENUE SERVICE,		22136436
43. Nonrevenue Service Locomotive-Miles,		1456137
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	250428909	
45. Empty,	75760538	
46. Caboose,	9402852	
47. TOTAL,		335792299
Passenger Car-Miles—		
48. Passenger,	20044607	
49. Sleeping, Parlor, and Observation,	10874032	
50. Other Passenger-Train Cars,	18518096	
51. TOTAL,		49436735
Special Car-Miles—		
52. Freight—loaded,	136151	
53. Freight—empty,	1621	
54. Caboose,	11648	
55. Passenger,	16608	
56. Sleeping, Parlor, and Observation,	21616	
57. Other Passenger-Train Cars,	8762	
58. TOTAL,		197907
59. TOTAL IN REVENUE SERVICE,		385126236
60. Nonrevenue Service Car-Miles		7173607
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	9778104	
62. Passenger Train-Miles,	819795	
63. Mixed Train-Miles,	810699	
64. Special Train-Miles,	15614	
65. TOTAL REVENUE TRAIN MILEAGE,		18177933
66. Nonrevenue Service Train-Miles,		1610305

TRAFFIC AND MILEAGE STATISTICS—STATE OF .....

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES.				
		DOLLARS.		CTS.	MILLS.	
PASSENGER TRAFFIC:						
1. Number of Passengers Carried Earning Revenue,	3189012					
2. Number of Passengers Carried One Mile,	18439509					
3. Number of Passengers Carried One Mile per Mile of Road,	89732					
4. Average Distance Carried,* miles,	57.82					
5. Total Passenger Revenue—Page 45,		3640627		45		
6. Average Amount Received from each Passenger,†				114	161	
7. Average Receipts per Passenger per Mile,†				1	974	
8. Total Passenger Service Train Revenue—Page 45,		4306546		24		
9. Passenger Service Train Revenue per Mile of Road,*		20970				
10. Passenger Service Train Revenue per Train-Mile,†				141	676	
FREIGHT TRAFFIC:						
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	14353755					
12. Number of Tons Carried One Mile,	2173744733					
13. Number of Tons Carried One Mile per Mile of Road,	10388487					
14. Average Distance Haul of One Ton,* miles,	147.96					
15. Total Freight Revenue—Page 45,		15658661		07		
16. Average Amount Received for each Ton of Freight,†				109	091	
17. Average Receipts per Ton per Mile,†					737	
18. Freight Revenue per Mile of Road,*		76700				
19. Freight Revenue per Train-Mile,†				466	740	
TOTAL TRAFFIC:						
20. Operating Revenues—Page 45,		20276803				
21. Operating Revenues per Mile of Road,*		98430	1			
22. Operating Revenues per Train-Mile,†				8772	879	
23. Operating Expenses—Page 65 (or 65A),		11760071	98			
24. Operating Expenses per Mile of Road,*		57084				
25. Operating Expenses per Train-Mile,†				1877	765	
26. Net Operating Revenue (or Deficit)—Page 39,		8466736	10			
27. Net Operating Revenue (or Deficit) per Mile of Road,*		41019				
28. Average Number of Passengers per Car-Mile,	11					
29. Average Number of Passengers per Train-Mile,	61					
30. Average Number of Passenger Cars per Train-Mile,*	5.30					
31. Average Number of Tons of Freight per Loaded Car-Mile,*	2784					
32. Average Number of Tons of Freight per Train-Mile,*	63205					
33. Average Number of Freight Cars per Train-Mile,*	3846					
34. Average Number of Loaded Cars per Train-Mile,*	2759					
35. Average Number of Empty Cars per Train-Mile,*	977					
36. Average Mileage Operated During Year,*	205494					

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—STATE OF _____—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	3323017	
38. Passenger Locomotive-Miles	2458576	
39. Mixed Locomotive-Miles,	141627	
40. Special Locomotive-Miles,	5327	
41. Switching Locomotive-Miles,	1296726	
42. TOTAL IN REVENUE SERVICE,		7825183
43. Nonrevenue Service Locomotive-Miles,		461327
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	92976075	
45. Empty,	37796151	
46. Caboose,	3390948	
47. TOTAL,		134163174
Passenger Car-Miles—		
48. Passenger,	7713117	
49. Sleeping, Parlor, and Observation,	3311063	
50. Other Passenger-Train Cars,	5595195	
51. TOTAL,		16117370
Special Car-Miles—		
52. Freight—loaded,	46731	
53. Freight—empty,	2147	
54. Caboose,	2696	
55. Passenger,	7181	
56. Sleeping, Parlor, and Observation,	5842	
57. Other Passenger-Train Cars.	5819	
58. TOTAL,		68482
59. TOTAL IN REVENUE SERVICE,		145311027
60. Nonrevenue Service Car-Miles,		6817478
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	2218531	
62. Passenger Train-Miles,	790019	
63. Mixed Train-Miles,	137964	
64. Special Train-Miles,	3204	
65. TOTAL REVENUE TRAIN MILEAGE,		6264518
66. Nonrevenue Service Train-Miles,		438791

FREIGHT TRAFFIC MOVEMENT—STATE OF [redacted]

[Page 100 follows.]

[COMPANY'S MATERIAL EXCLUDED.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD. Whole Tons.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS. Whole Tons.	*TOTAL FREIGHT TONNAGE. Whole Tons.	Per Cent.
		Lodge Motion see page 96			
Products of Agriculture.	Grain,			3248811	16.89
	Flour,			301671	1.57
	Other Mill Products,			170315	.89
	Hay,			149173	.78
	Tobacco,				
	Cotton,			20035	.10
	Fruit and Vegetables,			41671	.22
	Other Products of Agriculture,			143765	.74
	TOTAL,			4074461	21.19
Products of Animals.	Live Stock,			196091	1.02
	Dressed Meats,			18386	.10
	Other Packing-House Products,			3201	.02
	Poultry, Game, and Fish,			2020	.01
	Wool,			7090	.04
	Hides and Leather,			8370	.04
	Other Products of Animals,			8130	.04
	TOTAL,			243288	1.27
Products of Mines.	Anthracite Coal,			3954038	20.55
	Bituminous Coal,			1321797	6.87 6.87
	Coke,			236222	1.23
	Ores,			7971962	41.30
	Stone, Sand, and other like articles,			438351	2.28
	Other Products of Mines,			93115	.49
	TOTAL,			10426858	54.22
Products of Forests.	Lumber,			1430891	7.44
	Other Products of Forests,			115742	.598
	TOTAL,			2581633	13.42
Manufactures.	Petroleum and other Oils,			70204	.37
	Sugar,				
	Naval Stores,				
	Iron, Pig and Bloom,			5348	.03
	Iron and Steel Rails,			75866	.39
	Other Castings and Machinery,			70541	.37
	Bar and Sheet Metal,			63010	.33
	Cement, Brick, and Lime,			272013	1.42
	Agricultural Implements,			58163	.30
	Wagons, Carriages, Tools, etc.,			13943	.07
	Wines, Liquors, and Beers,			54777	.29
	Household Goods and Furniture,			20748	.10
	Other Manufactures,			110899	.57
	TOTAL,			815506	4.24
Merchandise,				581862	3.05
Miscellaneous: Other commodities not mentioned above,				502620	2.61
TOTAL TONNAGE—STATE,					
TOTAL TONNAGE—ENTIRE LINE,				19232278	100.—

MILEAGE—ENTIRE LINE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	6040.57	87.20	452.04	3.28		50.45	6636.54	377.16	33.92	6552.17
Miles of second track,	127.50			3.74			131.24	36.07		131.24
Miles of third track,	9.28						9.28			9.28
Miles of fourth track,	9.29						9.29		Same as Main	9.29
Miles of yard track and sidings,	149.33	27.21	6.08	30.59			161.82.1		161.82.1	
" " 5th track	2.32						2.32			2.32
" " 6th "	1.44						1.44			1.44
TOTAL MILEAGE OPERATED (All Tracks).	7684.73	114.41	519.12	37.61		50.45	8408.32		33.92 Same as Main 161.82.1	6705.74

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Wisconsin	32.19			3.28		3.89	43.36			39.47
Minnesota	1986.09	50.29	1.87			13.30	2051.44	23.40	13.15	2039.49
South Dakota	262.36						262.36			262.36
North Dakota	1532.75	11.78				19.06	1563.59	152.74	20.77	1523.76
Montana	1357.62	11.03				2.53	1371.18	92.63		1368.65
Idaho	80.24						80.24			80.24
Washington	789.38	14.10				2.75	806.23	20.64		803.49
Manitoba			161.71				161.71	1.57.6		161.71
British Columbia			289.51			4.90	294.41	77.50		289.51
TOTAL MILEAGE OPERATED (Single Track).	6040.57	87.20	453.09	3.28		50.45	6636.54	377.16	33.92	6552.17

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED.				TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.					IRON.	STEEL.	
Wisconsin	32.19				32.19			32.19	
Minnesota	2003.77	50.29			2054.06	23.40	13.15	2039.41	
South Dakota	262.36				262.36			262.36	
North Dakota	1532.75	11.78			1544.53	152.74	20.77	1523.76	
Wood	76.58				76.58			76.58	
Montana	1357.62	11.03			1368.65	92.63		1368.65	
Idaho	80.24				80.24			80.24	
Washington	800.76	14.10			814.86	20.64		814.86	
TOTAL MILEAGE OWNED (Single Track).	6144.77	87.20			6231.77	289.41	33.92	6197.85	

BLURRED PAGES

MILEAGE—STATE OF _____

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	198603	5029	182			1330	205144	2340	1315	202499
Miles of second track,	7748						7748			7748
Miles of third track,	928						928			928
Miles of fourth track,	929						929			929
Miles of yard track and sidings,	59397	1880	384				61661		61661	
" fifth track,	232						232			232
" sixth "	144						144			144
TOTAL MILEAGE OPERATED (All Tracks).	267481	6909	566			1330	276786		62976	212480

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	198603	5029	182			1330	205144	2340	1315	202499
TOTAL MILEAGE OPERATED (Single Track).	198603	5029	182			1330	205144	2340	1315	202499

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	200227	5029		205256	2340	1315	203941	
TOTAL MILEAGE OWNED (Single Track).	200227	5029		205256	2340	1315	203941	

BLURRED PAGES

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Minnesota July 1 to Oct 31	5130							5130
North Dakota	955359							955359
Wisconsin	897058							897058
Minnesota	4304343			7126018		2031655		7321716
South Dakota	446711							446711
Mich.	41			107500				107541
Montana	660844							660844
State								
Washington	4575751							4575751
British Columbia	172807							172807
Manitoba	77040			109600				186640
TOTAL,	15409855			7147718		2031655		22769074

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
	The taxes above shown cover that accruing and paid for the year upon property owned by The Great Northern Ry Co and property operated under Lease or							
	Otherwise / Co provides that The Great Northern Railway Co. pay all Taxes & Assessments				while the Lease from the Duluth Superior & Western Terminal			
	upon the property, earnings or income as they become due & payable, as							
	portion of the Rental for use of the property. Such payments are							
	not treated in our accounts as "rentals" but as "Taxes."							
TOTAL,								

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ANNUAL REPORT

OF

Minneapolis Western Ry Co.

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1908.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Capital Stock: ~~Common~~,	2500	100	250000				250000		None
Preferred,									
TOTAL,	2500		250000				250000		

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	~~Common~~, Preferred,					
Issued for Construction of New Properties:	~~Common~~, ~~Preferred~~,			2500	250000	
Issued for Additions and Betterments:	Common, Preferred,					
Issued for Purchase of Railway or Other Property:	Common, Preferred,					
Issued for Acquisition of Securities:	Common, Preferred,					
Issued for Reorganization:	Common, Preferred,					
TOTAL,				2500	250000	

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM. Date of Issue.	TERM. Date of Maturity.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
First Mtg Bonds	July 1. 1901	July 1. 1951	500000	500000			500000	5	July Jany	250000	250000
PLAIN BONDS, DEBENTURES, AND NOTES:											
COLLATERAL TRUST BONDS:											
INCOME BONDS:											
MISCELLANEOUS OBLIGATIONS:											
TOTAL.			500000	500000			500000			250000	250000

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION.		TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST.	
		IN TREASURY.	IN SINKING OR OTHER FUNDS.		AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Mortgage Bonds, Plain Bonds, Debentures, and Notes, Collateral Trust Bonds, Income Bonds, Miscellaneous Obligations, Equipment Trust Obligations,	500000			500000	25000000	25000000
TOTAL.	500000			500000	25000000	

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:			500000	500000	
Issued for Additions and Betterments:					
Issued for Purchase of Railway or Other Property:					
Issued for Acquisition of Securities:					
Issued for Refundment of Securities:					
Issued for Reorganization:					
TOTAL.			500000	500000	

RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	250000	250000		169	147929	
Funded Debt—Page 27,	500000	500000			295858	
TOTAL,	750000	750000			443787	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,	214402	Receiver's Certificates,	
Bills Receivable,		Loans and Bills Payable,	
Due from Agents,		Audited Vouchers and Accounts.	3398109
Due from Solvent Companies and Individuals,	206287	Wages and Salaries,	134280
Traffic Balances due from other Companies,		Traffic Balances due to other Companies,	
Other Cash Assets [Excluding "Materials and Supplies."],[1]		Dividends not Called for,	
		Matured Interest Coupons Unpaid [Including Coupons Due July 1].	1250000
		Rents due July 1,	
		Miscellaneous,	
TOTAL—CASH AND CURRENT ASSETS,	2375689	TOTAL—CURRENT LIABILITIES,	4782389
BALANCE—CURRENT LIABILITIES,	2506700	BALANCE—CASH ASSETS,	
TOTAL,	4782389	TOTAL,	4782389

[1] Materials and Supplies on hand, $ 185722

[See General Balance Sheet—Page 83.]

EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.]		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
I. ROAD:						
1. Engineering,						
2. Right of Way and Station Grounds,						
3. Real Estate,						
4. Grading,						
5. Tunnels,						
6. Bridges, Trestles, and Culverts,						
7. Ties,						
8. Rails,						
9. Frogs and Switches,						
10. Track Fastenings and Other Material,						
11. Ballast,						
12. Track Laying and Surfacing,						
13. Roadway Tools,						
14. Fencing Right of Way,						
15. Crossings and Signs,						
16. Interlocking and Other Signal Apparatus,						
17. Telegraph and Telephone Lines,						
18. Station Buildings and Fixtures,						
19. General Office Buildings and Fixtures,						
20. Shops, Enginehouses, and Turntables,						
21. Shop Machinery and Tools,						
22. Water Stations,						
23. Fuel Stations,						
24. Grain Elevators,						
25. Storage Warehouses,						
26. Dock and Wharf Property,						
27. Electric-Light Plants,						
28. Electric-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,						
31. Miscellaneous Structures,						
32. Transportation of Men and Material,						
33. Rent of Equipment,						
34. Repairs of Equipment,						
35. Earnings and Operating Expenses during Construction,						
36. Cost of Road Purchased,						
TOTAL,					73985018	73985018

Amount given details

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO CAPITAL.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO SPECIAL FUNDS OR INCOME.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.] CHARGED TO CAPITAL.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.] CHARGED TO SPECIAL FUNDS OR INCOME.	TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
II. EQUIPMENT:						
37. Steam Locomotives,					123173 8	123173 8
38. Electric Locomotives,						
39. Passenger-Train Cars,						
40. Freight-Train Cars,						
41. Work Equipment,						
42. Floating Equipment.						
TOTAL,					123173 8	123173 8
III. GENERAL EXPENDITURES:						
43. Law Expenses,						
44. Stationery and Printing,						
45. Insurance,						
46. Taxes,						
47. Interest and Commissions,						
48. Other Expenditures,						
TOTAL,						
RECAPITULATION.						
I. ROAD,					7398501 8	7398501 8
II. EQUIPMENT,					123173 8	123173 8
III. GENERAL EXPENDITURES,						
TOTAL—ENTIRE LINE,					752167 56	752167 56
TOTAL—STATE OF MINNESOTA					752167 56	752167 56
Cost of Road per Mile of Line,					43778112	43778112
Cost of Equipment per Mile of Line,					7288 39	7288 39
General Expenditures per Mile of Line,						
TOTAL PER MILE OF LINE,					44506951	44506951
Total per Mile of Line—State of MINNESOTA					44506951	44506951

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:												
Rail Operations:												
Operating Revenues—Page 45,			490972									
Operating Expenses—Page 65,			374506									
NET OPERATING REVENUE,						116466						
NET OPERATING DEFICIT,												
Outside Operations—Page 67, A:												
Revenues,			None									
Expenses,												
NET REVENUE,												
NET DEFICIT,												
TOTAL NET REVENUE,						116466						
TOTAL NET DEFICIT,												
Taxes Accrued—Page 121, A,						20516	2					
OPERATING INCOME,											95530	4
OPERATING LOSS,												
OTHER INCOME:												
Rents Accrued from Lease of Road—Page 69,												
Other Rents—Credits:												
(a) Hire of Equipment—Balance—Page 81,												
(b) Joint Facilities—Page 69,			None									
(c) Miscellaneous Rents—Page 71,												
Separately Operated Properties—Profit—Page 75,												
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,												
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,												
Interest on Other Securities, Loans, and Accounts,												
Miscellaneous Income—Page 71,												
TOTAL OTHER INCOME,												
Gross Corporate Income carried forward,											95530	4
Gross Corporate Loss carried forward,												

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

| | | |

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1907,	4,386.26	Balance June 30, 1907,	
Balance for year brought forward from Income Account, Other Properties—Loss—Page 67, B,	1,807.54	Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B,	
Deductions for Year:		Additions for Year:	
Dividends Declared out of Surplus:			
(*a*) On Preferred Stock—Page 21			
per cent payable			
per cent payable			
(*b*) On Common Stock—Page 21			
per cent payable			
per cent payable			
(*c*) On Other Securities—Page 21			
per cent payable			
Balance Credit, June 30, 1908, carried to Balance Sheet—Page 85,	24,461.40	Balance Debit, June 30, 1908, carried to Balance Sheet—Page 83,	24,461.40
	24,461.40		24,461.40

Operating revenues from business originating and terminating in the State of Minnesota, see note 7, page 44.

OPERATING REVENUES—STATE OF MINNESOTA

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			
2. Passenger Revenue,			
3. Excess Baggage Revenue,			
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			
6. Express Revenue,			
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger-Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			
9. Switching Revenue,			
10. Special Service Train Revenue,			
11. Miscellaneous Transportation Revenue,			4741972
TOTAL REVENUE FROM TRANSPORTATION,			4741972
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			151800
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			16200
19. Miscellaneous,			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			168000
TOTAL OPERATING REVENUES—STATE,			
TOTAL OPERATING REVENUES—ENTIRE LINE,			4909972

(No entries required in this column for 1908.)

(No entries required in this column for 1908.)

OPERATING EXPENSES—ENTIRE LINE.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,			
Maintenance of Roadway and Track,	389069	5296	1037
Maintenance of Track Structures,	328802	4475	877
Maintenance of Buildings, Docks, and Wharves,	12323	168	33
Work Equipment—Repairs,			
Work Equipment—Renewals,			
Work Equipment—Depreciation,			
Injuries to Persons,			
Insurance,			
Other Maintenance of Way and Structures Expenses,	3800	52	10
	665	09	02
Total of Foregoing Accounts,	734659	10000	1959
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,			
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,			
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	734659	10000	1959
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,			
Locomotives—Repairs,	135824	4273	367
Revenue Cars—Repairs,	105445	3318	281
Floating Equipment—Repairs,			
Revenue Equipment—Renewals,			
Revenue Equipment—Depreciation,	73902	2325	197
Injuries to Persons,			
Insurance,			
Other Maintenance of Equipment Expenses,	2400	75	07
Total of Foregoing Accounts,	317571	9874	847
Maintaining Joint Equipment at Terminals—Dr.,			
Equipment Borrowed—Dr.,	4044	126	11
Maintaining Joint Equipment at Terminals—Cr.,			
Equipment Loaned—Cr.,			
TOTAL—MAINTENANCE OF EQUIPMENT,	321615	10000	858

[Annual Report Form—State Commissions.]

ANNUAL REPORT

OF

Duluth Terminal Ry Co.

TO THE

CORPORATION COMMISSION

OF THE

STATE OF ~~NORTH CAROLINA~~ Minnesota

FOR THE YEAR ENDING JUNE 30, 1908.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Capital Stock:									
~~Common,~~	500	100	50000	50000			50000	6	30000 0
Preferred,							1		
TOTAL,	500		50000	50000			50000		30000 0

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,					
	Preferred,					
Issued for Construction of New Properties:	Common,			500	50000	
	Preferred,					
Issued for Additions and Betterments:	Common,					
	Preferred,	None				
Issued for Purchase of Railway or Other Property:	~~Common,~~					
	~~Preferred,~~					
Issued for Acquisition of Securities:	Common,					
	Preferred,					
Issued for Reorganization:	Common,		0			
	Preferred,					
	TOTAL,			500	50000	

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM.		TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION.		TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST.			
	Date of Issue.	Date of Maturity.			IN TREASURY.	IN SINKING OR OTHER FUNDS.		RATE.	WHEN PAYABLE.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
First Mortgage Bonds	May 1 1889	May 1 1909	175000	175000			175000	6	May Nov	1050000	1050000
PLAIN BONDS, DEBENTURES AND NOTES:											
COLLATERAL TRUST BONDS:											
INCOME BONDS:											
MISCELLANEOUS OBLIGATIONS:											
TOTAL.			175000	175000			175000			1050000	1050000

RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	50000	50000		182	27472	P. & P.
Funded Debt—Page 27,	175000	175000		"	96154	
TOTAL,	225000	225000			123626	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,		Receiver's Certificates,	
Bills Receivable,		Loans and Bills Payable,	
Due from Agents,		Audited Vouchers and Accounts,	
Due from Solvent Companies and Individuals,		Wages and Salaries,	
Traffic Balances due from other Companies,	98342	Traffic Balances due to other Companies,	
Other Cash Assets [Excluding "Materials and Supplies."],		Dividends not Called for,	
		Matured Interest Coupons Unpaid [Including Coupons Due July 1],	
		Rents due July 1,	
		Miscellaneous,	
TOTAL—CASH AND CURRENT ASSETS,	98342	TOTAL—CURRENT LIABILITIES,	
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	98342
TOTAL,	98342	TOTAL,	98342

Materials and Supplies on hand, $ None

[*See General Balance Sheet—Page 83.*]

EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.]		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
I. ROAD:						
1. Engineering,						
2. Right of Way and Station Grounds,						
3. Real Estate,						
4. Grading,						
5. Tunnels,						
6. Bridges, Trestles, and Culverts,						
7. Ties,						
8. Rails,						
9. Frogs and Switches,						
10. Track Fastenings and Other Material,						
11. Ballast,						
12. Track Laying and Surfacing,						
13. Roadway Tools,						
14. Fencing Right of Way,						
15. Crossings and Signs,						
16. Interlocking and Other Signal Apparatus,						
17. Telegraph and Telephone Lines,						
18. Station Buildings and Fixtures,			412		Amount of Estimate	
19. General Office Buildings and Fixtures,						
20. Shops, Enginehouses, and Turntables,						
21. Shop Machinery and Tools,						
22. Water Stations,						
23. Fuel Stations,						
24. Grain Elevators,						
25. Storage Warehouses,						
26. Dock and Wharf Property,						
27. Electric-Light Plants,						
28. Electric-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,						
31. Miscellaneous Structures,						
32. Transportation of Men and Material,						
33. Rent of Equipment,						
34. Repairs of Equipment,						
35. Earnings and Operating Expenses during Construction,						
36. Cost of Road Purchased,						
TOTAL,			412		400485 06	

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.]		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
II. EQUIPMENT:						
37. Steam Locomotives,			None			
38. Electric Locomotives,						
39. Passenger-Train Cars,						
40. Freight-Train Cars,						
41. Work Equipment,						
42. Floating Equipment,						
TOTAL,						
III. GENERAL EXPENDITURES:						
43. Law Expenses,						
44. Stationery and Printing,						
45. Insurance,						
46. Taxes,						
47. Interest and Commissions,						
48. Other Expenditures,			92 37			
TOTAL,			92 37			
RECAPITULATION.						
I. ROAD,			4 17		400 48 50 6	399 56 7 81
II. EQUIPMENT,						
III. GENERAL EXPENDITURES,			92 37			
TOTAL—ENTIRE LINE,			91 72		400 48 50 6	399 56 7 81
TOTAL—STATE OF Minnesota			91 72		400 48 50 6	199 56 7 81
Cost of Road per Mile of Line,					220 04 6 74	219 54 27
Cost of Equipment per Mile of Line,						
General Expenditures per Mile of Line,						
TOTAL PER MILE OF LINE,					220 04 6 74	219 54 27
Total per Mile of Line—State of Minnesota					220 04 6 74	219 54 27

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:																		
Rail Operations:																		
Operating Revenues—Page 45																		
Operating Expenses—Page 65,				3	4	6	6	52										
NET OPERATING REVENUE,																		
NET OPERATING DEFICIT,																		
Outside Operations—Page 67, A:																		
Revenues,																		
Expenses,																		
NET REVENUE,																		
NET DEFICIT,																		
TOTAL NET REVENUE,																		
TOTAL NET DEFICIT,																		
Taxes Accrued—Page 121, A,																		
OPERATING INCOME,																		
OPERATING LOSS,																		
OTHER INCOME:																		
Rents Accrued from Lease of Road—Page 69,																		
Other Rents—Credits:																		
(a) Hire of Equipment—Balance—Page 81,																		
(b) Joint Facilities—Page 69,				3	0	6	9	67										
(c) Miscellaneous Rents—Page 71,																		
											2	7	2	3	3	15		
Separately Operated Properties—Profit—Page 75,																		
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,																		
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,																		
Interest on Other Securities, Loans, and Accounts,																		
Miscellaneous Income—Page 71,																		
TOTAL OTHER INCOME,																2	7	2 3 3 15
Gross Corporate Income carried forward,																2	7	2 3 3 15
Gross Corporate Loss carried forward,																		

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

Gross Corporate Income brought forward,			2723315
Gross Corporate Loss brought forward;			
DEDUCTIONS FROM GROSS CORPORATE INCOME:			
Rents Accrued for Lease of Other Roads—Page 73,			
Other Rents—Debits:			
(a) Hire of Equipment—Balance—Page 81,			
(b) Joint Facilities—Page 73,			
(c) Miscellaneous Rents—Page 75,			
Separately Operated Properties—Loss—Page 75,			
Interest Accrued on Funded Debt—Page 27,	1050000		
Other Interest,	335231		
Sinking Funds Chargeable to Income,			
Other Deductions—Page 75,			
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,			1385231
NET CORPORATE INCOME,			1338084
NET CORPORATE LOSS,			
DISPOSITION OF NET CORPORATE INCOME:			
Dividends Declared:			
(a) On Preferred Stock—Page 21:			
6 per cent payable June 30	300000		
per cent payable			
per cent payable			
per cent payable			
TOTAL,	500000		
(b) On Common Stock—Page 21:			
per cent payable			
per cent payable			
per cent payable			
per cent payable			
TOTAL,			
(c) On Other Securities—Page 21:			
per cent payable			
Additions and Betterments Charged to Income—Page 33;	300000		
Appropriations to Reserves,	1038084		
Miscellaneous:			
BALANCE FOR YEAR CARRIED FORWARD TO OF PROFIT AND LOSS,			1338084
			None

OPERATING EXPENSES—ENTIRE LINE.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,	29508	913	851
Maintenance of Roadway and Track,	248135	7676	7158
Maintenance of Track Structures,	39903	1234	1151
Maintenance of Buildings, Docks, and Wharves,			
Work Equipment—Repairs,			
Work Equipment—Renewals,			
Work Equipment—Depreciation,			
Injuries to Persons,			
Insurance,	3750	116	108
Other Maintenance of Way and Structures Expenses,	1973	61	57
Total of Foregoing Accounts,	323269	10000	9325
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,			
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,			
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	323269	10000	9325
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,			
Locomotives—Repairs,			
Revenue Cars—Repairs,			
Floating Equipment—Repairs,			
Revenue Equipment—Renewals,			
Revenue Equipment—Depreciation,	None		
Injuries to Persons,			
Insurance,			
Other Maintenance of Equipment Expenses,			
Total of Foregoing Accounts,			
Maintaining Joint Equipment at Terminals—Dr.,			
Equipment Borrowed—Dr.,			
Maintaining Joint Equipment at Terminals—Cr			
Equipment Loaned—Cr.,			
TOTAL—MAINTENANCE OF EQUIPMENT,			

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
III. TRAFFIC EXPENSES:			
Traffic Expenses (excluding Insurance),			
Insurance,			
TOTAL—TRAFFIC EXPENSES,			
IV. TRANSPORTATION EXPENSES:			
Superintendence and Dispatching Trains,			
Station Service,			
Stock Yards and Grain Elevators,			
Yard Enginemen,			
Other Yard Employees,	10755	7918	311
Fuel for Yard Locomotives,			
All Other Yard Expenses,	273	202	08
Total of Last Six Accounts,	11028	8120	319
Operating Joint Yards and Terminals—Dr.,			
Operating Joint Yards and Terminals—Cr.,			
Total Station and Yard Expenses,	11028	8120	319
Road Enginemen and Motormen,			
Fuel for Road Locomotives,			
Other Road Locomotive Supplies and Expenses,			
Road Trainmen,			
Train Supplies and Expenses,			
Injuries to Persons,			
Loss and Damage,			
Other Casualties,			
Insurance,			
All Other Transportation Expenses,	2555	1880	74
Total of Last Ten Accounts,	2555	1880	74
Operating Joint Tracks—Dr.,			
Operating Joint Tracks—Cr.,			
Total Movement Expenses,			
TOTAL—TRANSPORTATION EXPENSES,	13583	10000	393

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
V. GENERAL EXPENSES:			
Administration,	9300	9490	268
Insurance,			
Other General Expenses,	500	510	14
Total of Foregoing Accounts,	9800	10000	282
General Administration Joint Tracks, Yards, and Terminals—Dr.,			
General Administration Joint Tracks, Yards, and Terminals—Cr.,			
TOTAL—GENERAL EXPENSES,	9800	10000	282
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures,	323269		9325
II. Maintenance of Equipment			
III. Traffic Expenses,			
IV. Transportation Expenses,	13583		393
V. General Expenses,	9800		282
TOTAL OPERATING EXPENSES,	346652		10000
OPERATING EXPENSES—STATE OF Minnesota			
I. Maintenance of Way and Structures,			
II. Maintenance of Equipment,			
III. Traffic Expenses,	Same as Colorado		
IV. Transportation Expenses,			
V. General Expenses,			
TOTAL OPERATING EXPENSES,			
Ratio of Operating Expenses to Operating Revenues, ✓ per cent.*			

*Two (2) decimal figures required.

RENTS RECEIVABLE.

1. FROM LEASE OF ROAD.

[For companies making operating reports.]

PROPERTY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
TOTAL,				

2. FROM JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
JOINT TRACKS:				
Trackage	Dw Duluth	Gt. Northern Ry Co	3069967	
JOINT YARDS AND TERMINALS:				3069967
TOTAL,				3069967

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	40048806	Cost of Road—Page 35,		39956781		91725
		Cost of Equipment—Page 37,				
		General Expenditures—37,				
		Stocks Owned—Pages 49, 51, and 57,				
		Funded Debt Owned—Pages 53, 55, and 57,				
		Other Permanent Investments,				
		Lands Owned,				
	8826340	Cash and Current Assets—Page 29,		9863424	1038084	
		OTHER ASSETS:				
		Equipment Trusts,				
		Materials and Supplies—Page 29,				
		Sinking, Insurance, and Other Funds—Page 59,				
		Sundries,				
		Profit and Loss—Page 43,				
	48873846	GRAND TOTAL,		49819705	946359	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907.		LIABILITIES.	JUNE 30, 1908.		YEAR ENDING JUNE 30, 1908.	
ITEM.	TOTAL.		ITEM.	TOTAL.	INCREASE.	DECREASE.
	5000000	Capital Stock—Page 21,		5000000		
	17500000	Funded Debt—Page 27,		17500000		
		Current Liabilities—Page 29,				
	175000	Accrued Interest on Funded Debt not yet payable,		175000		
	8650340	Fund for Renewal of Bridging		9688424	1038084	
	17548506	Advances for Construction for which Bonds may be issued		17458781		91725
		Profit and Loss—Page 43,				
	48973846	GRAND TOTAL,		49870705	946359	

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
In the State of Minnesota the railway companies are required to pay tax on gross earnings from operation. The line of this company is used by other railway companies that pay rental for the use of same, and the only income of this company is derived from such rental. The Companies using tracks owned by this company pay into the State Treasury the earnings tax for traffic over this road. The rental received by this Company is not treated as "Operating Income" but as Other Income								
TOTAL,								

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL,								

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
III. TRAFFIC EXPENSES:			
Traffic Expenses (excluding Insurance),	None		
Insurance,			
TOTAL—TRAFFIC EXPENSES,			
IV. TRANSPORTATION EXPENSES:			
Superintendence and Dispatching Trains,	640	02	02
Station Service,	272821	1030	728
Stock Yards and Grain Elevators,			
Yard Enginemen,	382928	1444	1021
Other Yard Employees,	975743	3678	2602
Fuel for Yard Locomotives,	705379	2659	1881
All Other Yard Expenses,	43196	163	115
Total of Last Six Accounts,	2380067	8974	6347
Operating Joint Yards and Terminals—Dr.,	61113	231	163
Operating Joint Yards and Terminals—Cr.,			
Total Station and Yard Expenses,	2441180	9207	6512
Road Enginemen and Motormen,			
Fuel for Road Locomotives,			
Other Road Locomotive Supplies and Expenses,			
Road Trainmen,			
Train Supplies and Expenses,			
Injuries to Persons,	8450	32	23
Loss and Damage,	47202	179	126
Other Casualties,	38585	148	103
Insurance,			
All Other Transportation Expenses,	114612	434	306
Total of Last Ten Accounts,	2088449	793	558
Operating Joint Tracks—Dr.,			
Operating Joint Tracks—Cr.,			
Total Movement Expenses,			
TOTAL—TRANSPORTATION EXPENSES,	26506699	10000	7070

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR SMALL ROADS AND SWITCHING AND TERMINAL COMPANIES.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
V. GENERAL EXPENSES:			
Administration,	30000	70.48	80
Insurance,			
Other General Expenses,	12563	29.52	33
Total of Foregoing Accounts,	42563	100.00	1.13
General Administration Joint Tracks, Yards, and Terminals—Dr.,			
General Administration Joint Tracks, Yards, and Terminals—Cr.,			
TOTAL—GENERAL EXPENSES,			
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures,	734659		1959
II. Maintenance of Equipment	321615		858
III. Traffic Expenses,			
IV. Transportation Expenses,	2650669		7070
V. General Expenses,	42563		113
TOTAL OPERATING EXPENSES,	3749506		10000
OPERATING EXPENSES—STATE OF MINNESOTA			
I. Maintenance of Way and Structures,			
II. Maintenance of Equipment,			
III. Traffic Expenses,			
IV. Transportation Expenses, (Same as above)			
V. General Expenses,			
TOTAL OPERATING EXPENSES,			
Ratio of Operating Expenses to Operating Revenues, 76.36 per cent.*			

*Two (2) decimal figures required.

RENTS PAYABLE.

1. FOR LEASE OF ROAD.

NAME OF LESSOR.	LOCATION OF PROPERTY.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
		None.			
TOTAL,					

2. FOR JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
JOINT TRACKS:				
JOINT YARDS AND TERMINALS:	Jct Minneapolis	St. Northern Ry. Co	160 00	
TOTAL,				160 00
				160 00

RENTS PAYABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
Round House etc Strip Land	Minneapolis Jct. Minneapolis	Gt. Northern Ry Co Mpls. Mill Co	72437 5000	
TOTAL,				77437

OTHER DEDUCTIONS FROM INCOME.

NATURE OF DEDUCTION.	ITEM.	TOTAL.	REMARKS.
TOTAL,		None	

SEPARATELY OPERATED PROPERTIES.

[For companies making operating reports.]

NAME OF PROPERTY.	LOCATION OF PROPERTY.	PROFIT.	LOSS.
NET TOTAL,			

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	7998010	Cost of Road—Page 35,		7998010		
	1231738	Cost of Equipment—Page 37,		1231738		
		General Expenditures—37,				
		Stocks Owned—Pages 49, 51, and 57,				
		Funded Debt Owned—Pages 53, 55, and 57,				
		Other Permanent Investments,				
		Lands Owned,				
	2228503	Cash and Current Assets—Page 29,		2275689	46886	
		OTHER ASSETS:				
		Equipment Trusts,				
		Materials and Supplies—Page 29,				
	139800			185728	45928	
		Sinking, Insurance, and Other Funds—Page 59,				
		Sundries,				
	638626	Profit and Loss—Page 43,		2446140	1807514	
	78229977	GRAND TOTAL,		80124305	1900328	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	LIABILITIES.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	25000000	Capital Stock—Page 21,		25000000		
	60000000	Funded Debt—Page 27,		50000000		
	2958194	Current Liabilities—Page 29,		4782389	1824195	
		Accrued Interest on Funded Debt not yet payable,				
	93339	Taxes not due.		95570	2231	
	172444	Fund for replacement of equipment in service		246346	73902	
		Profit and Loss—Page 43,				
	78223977	GRAND TOTAL,		80174305	1900328	

TRAFFIC AND CAR STATISTICS—ENTIRE LINE.

ITEM:	COLUMN FOR NUMBER OF CARS.	COLUMN FOR REVENUE AND RATES.
CAR STATISTICS.		
SWITCHING TRAFFIC—FREIGHT:		
1. Number of Cars Handled Earning Revenue—Loaded,	33098	
2. Number of Cars Handled Earning Revenue—Empty,		
3. Number of Cars Handled at Cost for Tenant Companies,		
4. Number of Cars Handled not Earning Revenue—Loaded,		
5. Number of Cars Handled not Earning Revenue—Empty,	29557	
6. TOTAL NUMBER OF CARS HANDLED,	62655	
SWITCHING TRAFFIC—PASSENGER:		
7. Number of Cars Handled Earning Revenue—Loaded,		
8. Number of Cars Handled Earning Revenue—Empty,		
9. Number of Cars Handled at Cost for Tenant Companies,	None	
10. Number of Cars Handled not Earning Revenue—Loaded,		
11. Number of Cars Handled not Earning Revenue—Empty,		
12. TOTAL NUMBER OF CARS HANDLED,		
TERMINAL OPERATIONS—FREIGHT:		
13. Number of Cars Handled Earning Revenue,	None	
14. Number of Cars Handled at Cost for Tenant Companies,		
15. TOTAL NUMBER OF CARS HANDLED,		
TERMINAL OPERATIONS—PASSENGER:		
16. Number of Cars Handled Earning Revenue,	None	
17. Number of Cars Handled at Cost for Tenant Companies,		
18. TOTAL NUMBER OF CARS HANDLED,		
SUMMARY:		
19. Total Number of Cars Handled Earning Revenue—Loaded,	33098	
20. Total Number of Cars Handled Earning Revenue—Empty,		
21. Total Number of Cars Handled not Earning Revenue—Loaded,		
22. Total Number of Cars Handled not Earning Revenue—Empty,	29557	
23. Total Number of Cars Handled at Cost for Tenant Companies,		
24. TOTAL NUMBER OF CARS HANDLED,	62655	
REVENUE AND EXPENSE STATISTICS.		
SWITCHING TRAFFIC AND TERMINAL OPERATIONS:		
25. Revenue from Revenue Cars,		474197 72
26. Other Revenue,		16800 00
27. TOTAL REVENUE,		490997 72
28. Average Revenue per Revenue Car.*		14.3
29. Amount Received from Tenant Companies,		
30. Average Amount Received per Car from Tenant Companies,*		
31. Operating Expenses,		374906
32. Average Expenses per Car Handled,*		5.9

* Three (3) decimal figures required.

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Minnesota				205 62				205 62
TOTAL,				205 62				205 62

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
			None					
TOTAL,								